S. Hrg. 100-543

CITY OF ROCKS NATIONAL RESERVE; HAGERMAN FOSSIL BEDS NATIONAL MONUMENT; DELTA REGION PRESERVATION COMMISSION; AND SUBMERGED LANDS IN THE STATE OF ALAKSA

HEARING

BEFORE THE

SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1335, S. 1675, H.R. 2566, and H.R. 2629

OCTOBER 20, 1987

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S311-53

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CITY OF ROCKS NATIONAL RESERVE; HAGERMAN FOSSIL BEDS NATIONAL MONUMENT; DELTA REGION PRESERVATION COMMISSION; AND SUBMERGED LANDS IN THE STATE OF ALASKA

TUESDAY, OCTOBER 20, 1987

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS,
NATIONAL PARKS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:04 p.m., in room SD-366, Dirksen Senate Office Building, Hon. James A. McClure presiding.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

Senator McCLURE. The committee will come to order.

Good afternoon.

The Public Lands, National Parks and Forests Subcommittee will receive testimony today on four measures. The four measures are H.R. 2629, a bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska; S. 1335, a bill to establish the City of Rocks National Reserve in the State of Idaho, and for other purposes; S. 1675, a bill to provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes; and H.R. 2566, a bill to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes.

I will place a copy of each measure in the hearing record. The hearing record will remain open for two weeks.

I have an extensive statement which I will put in the record at this point, together with statements by the chairman of the full committee, the Honorable J. Bennett Johnston, Senator Metzenbaum, Senator Murkowski, and I would like also to include as part of the record a letter from the Governor of the State of Idaho.

[The material follows:]

II

100TH CONGRESS
1ST SESSION

S. 1335

To establish the City of Rocks National Reserve in the State of Idaho, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 1987

Mr. McCLURE (for himself and Mr. SYMMS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To establish the City of Rocks National Reserve in the State of Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—This may be cited as the "City of Rocks National Reserve Act of 1987".

SEC. 2. (a) There is hereby established the City of Rocks National Reserve (hereinafter referred to as the "reserve"), in order to preserve and protect the significant cultural resources; to manage recreational use; to protect and maintain scenic quality; and to interpret the nationally significant values of the reserve.

(b) The reserve shall include approximately ten thousand three hundred and twenty acres as depicted on the map entitled "Boundary Map, City of Rocks National Reserve, Idaho", numbered and dated . The map shall be on file in the offices of the National Park Service, Department of the Interior and the Offices of the Governor, State of Idaho.

(c) Within six months after the enactment of this Act, the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") shall file a legal description of the reserve designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection (b). The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior and the offices of the Governor of the State of Idaho.

SEC. 3. (a) To achieve the purpose of this Act, the Secretary, in cooperation with the appropriate State agencies and local units of general government, shall formulate a comprehensive plan for the protection, preservation, and interpretation of the reserve. The plan shall identify those areas or zones within the reserve which would most appropriately be devoted to—

(A) public use and development;

(B) historic and natural preservation; and

(C) private use subject to appropriate local ordinances designed to protect the historic rural setting.

(b) Within eighteen months following the date of enactment of this section, the Secretary shall transmit the plan to the President of the Senate and the Speaker of the House of Representatives and to the Governor of the State of Idaho.

(c) At such time as the State or appropriate units of local government having jurisdiction over land use within the reserve have enacted ordinances or established regulations which in the judgement of the Secretary will protect and preserve the historic and natural features of the area in accordance with the comprehensive plan, the Secretary shall, pursuant to cooperative agreement—

(1) transfer management and administration over all or any part of the property acquired under subsection (d) of this Act to the State or appropriate units of local government;

(2) provide technical assistance to such State or until of local government in the management, protection, and interpretation of the reserve; and

(3) make periodic grants, which shall be supplemental to any other funds to which the grantee may be entitled under any other provision of law, to such State or local unit of government for the annual costs of operation and maintenance, including but not limited to, salaries of personnel and the protection, preservation, and rehabilitation of the reserve except that no such grant may exceed 50 per centum of the estimated annual cost, as determined by the Secretary, of such operation and maintenance.

(d)(1) The Secretary is authorized to acquire such lands and interests as he determines are necessary to accomplish the purposes of this Act by donation, purchase with donated funds, or exchange, except that the Secretary may not acquire the fee simple title to any land without the consent of the owner. The Secretary shall, in addition, give prompt and careful consideration to any offer made by an individual owning property within the reserve to sell such property, if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship.

(2) Lands and waters, and interests therein, within the boundaries of the reserve which were administered by the Forest Services, United States Department of Agriculture and the Bureau of Land Management, Department of the In-

terior prior to the date of enactment of this Act are hereby transferred to the administrative jurisdiction of the Secretary to be administered by the National Park Service in accordance with this Act.

(3) Lands and interest therein so acquired shall, so long as responsibility for management and administration remains with the United States, be administered by the Secretary subject to the provisions of the Act of August 25, 1916 (39 Stat. 535), as amended and supplemented, and in a manner consistent with the purpose of this Act.

(e) If, after the transfer of management and administration of any lands pursuant to subsection (c) of this section, the Secretary determines that the reserve is not being managed in a manner consistent with the purposes of this Act, he shall so notify the appropriate officers of the State or local unit of government to which such transfer was made and provide for a ninety-day period in which the transferee may make such modifications in applicable laws, ordinances, rules, and procedures as will be consistent with such purposes. If, upon the expiration of such ninety-day period, the Secretary determines that such modifications have not been made or are inadequate, he shall withdraw the management and administration from the transferee and he shall manage such lands in accordance with the provisions of this Act.

(f) Subject to valid existing rights, Congress expressly reserves to the United States such water rights as may be required to carry out the primary purposes, as expressed in section 2, of the reserve created by this Act with respect to all lands withdrawn from the public domain by this Act. Such rights shall be perfected by the United States pursuant to the procedural requirements of the laws of the State of Idaho. The priority of such rights shall be as of the date of enactment of this Act. The United States may acquire such additional water rights as it deems necessary to carry out its responsibilities under this Act. Such water rights shall be acquired pursuant to the substantive and procedural requirements of the laws of the State of Idaho. Nothing in this Act shall be construed to reserve any implied water right to the United States. The transfer of lands to the administrative jurisdiction of the Secretary pursuant to section 3 shall not affect any reserved water right which the United States may have acquired for the primary purposes for which such lands were originally withdrawn to the extent such rights are consistent with the purposes for which such lands are to be administered pursuant to this Act.

(g) There is hereby authorized to be appropriated not to exceed $2,000,000 to carry out the provisions of this Act.

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II

100TH CONGRESS
1ST SESSION

S. 1675

To provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 10, 1987

Mr. MCCLURE introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

---

A BILL

To provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in order to preserve for the benefit and enjoyment of present and future generations the outstanding paleontological sites known as the Hagerman Valley fossil sites, to provide a center for continuing paleontological research, and to provide for the display and interpretation of the scientific specimens uncovered at such sites, there is hereby established the Hagerman Fossil Beds National Monument.

The Hagerman Fossil Beds National Monument shall comprise the lands generally depicted on the map entitled "   ", number "   " and dated   which shall be kept on file and available for public inspections in the office of the Director, National Park Service, Department of the Interior: *Provided however,* That such area shall not exceed four thousand three hundred and ninety-four acres.

SEC. 2. (a) The Secretary of the Interior (hereinafter referred to as the "Secretary") is authorized to acquire lands or interests in lands only by donation, purchase with donated funds, exchange or bequest.

(b) Notwithstanding any other provision of law, any Federal property located within the boundaries of the Monument shall be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of this Act.

(c) Any land or interest in land owned by the State of Idaho or any of its political subdivisions may be acquired only by exchange.

(d) In exercising the authority to acquire property by exchange, the Secretary may acquire title to any non-Federal property, or interest therein, located within the monument; and notwithstanding any other provision of law, he may convey in exchange therefor any federally-owned property within the State of Idaho which he classifies as suitable for exchange and which is under his administrative jurisdiction. The values of the properties so exchanged shall be approximately equal or, if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or to the Secretary, as the circumstances require.

SEC. 3. Upon the establishment of the Hagerman Fossil Beds National Monument and thereafter, the Secretary shall administer property acquired pursuant to this Act in accordance with the Act entitled "An Act to establish a National Park Service, and for other purposes", approved August 25, 1916 (39 Stat. 535; 16 U.S.C. 1 et seq.), as amended and supplemented.

SEC. 4. Subject to valid existing rights, Congress expressly reserves to the United States such water rights as may be required to carry out the primary purposes of the monument created by this Act with respect to all lands withdrawn from the public domain by this Act. Such rights shall be perfected by the United States pursuant to the procedural requirements of the laws of the State of Idaho. The priority of such rights shall be as of the date of enactment of this Act. The United States may acquire such additional water rights as it deems necessary to carry out its responsibilities under this Act. Such water rights shall be acquired pursuant to the substantive and procedural requirements of the laws of the

State of Idaho. Nothing in this Act shall be construed to reserve any implied water right to the United States. The transfer of lands to the administrative jurisdiction of the Secretary pursuant to section 2 shall not affect any reserved water right which the United States may have acquired for the primary purposes for which such lands were originally withdrawn to the extent such rights are consistent with the purposes for which such lands are to be administered pursuant to this Act.

SEC. 5. All electrical generating and transmission and irrigation pumping and transmission facilities in existence within and adjacent to the boundaries of the Hagerman Fossil Beds National Monument, together with the right to operate, maintain, repair, uprate, and modify such facilities, are hereby authorized. The provisions of the Federal Power Act, as amended (41 Stat. 1063), shall continue to apply to any project as defined in such Act, including all facilities and improvements required or used in connection with the operation and maintenance of said project in existence within the Hagerman Fossil Beds National Monument on the date of enactment of this Act.

SEC. 6. Notwithstanding any other provision of law or regulation pursuant to any law, in order to provide a center for continuing paleontological research, the Secretary shall incorporate in the general management plan provisions for the orderly and regulated use of and research in the monument by qualified scientists, scientific groups, and students under the jurisdiction of such qualified individuals and groups.

SEC. 7. There are hereby authorized to be appropriated not to exceed $5,000,000 to carry out the purposes of this Act.

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II

100TH CONGRESS
1ST SESSION

H. R. 2566

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 25), 1987

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 907(e) of the National Parks and Recreation Act of 1978, as amended (16 U.S.C. 230f(e)), is amended by striking out "ten years" and inserting in lieu thereof "twenty years".

Passed the House of Representatives September 29, 1987.

Attest: DONNALD K. ANDERSON,

Clerk.

II

100TH CONGRESS
1ST SESSION

H. R. 2629

IN THE SENATE OF THE UNITED STATES

AUGUST 4, 1987

Received; read twice and referred to the Committee on Energy and Natural Resources

AN ACT

To amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—SUBMERGED LANDS

SEC. 101. Section 901 of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96–487) is amended by striking out text of such section and inserting in lieu thereof:

"SEC. 901. (a)(1) Except as provided in paragraph (2), whenever the Secretary surveys land selected by a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act, lakes, rivers, and streams shall be meandered in accordance with the principles in the Bureau of Land Management, 'Manual of Surveying Instructions' (1973).

"(2) If title to lands beneath navigable waters of a lake less than fifty acres in size or a river or stream less than three chains in width did not vest in the State pursuant to the Submerged Lands Act, such lake, river, or stream shall not be meandered.

"(3) The Secretary is not required to determine the navigability of a lake, river, or stream which because of its size or width is required to be meandered or to compute the acreage of the land beneath such lake, river, or stream or to describe such land in any conveyance document.

"(4) Nothing in this subsection shall be construed to require ground survey or monumentation of meanderlines.

"(b)(1) Whenever, either before or after the date of enactment of this section, the Secretary conveys land to a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act which abuts or surrounds a meanderable lake, river, or stream, all right, title, and interest of the

United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint, as the case may be, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. The right, title, and interest vested in a Native or Native Corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

"(2) The specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the document entitled, 'Memorandum of Agreement between the United States Department of the Interior and the State of Alaska' dated March 28, 1984, signed by the Secretary and the Governor of Alaska and submitted to the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, are hereby incorporated in this section and are ratified as to the duties and obligations of the United States and the State, as a matter of Federal law.

"(c)(1) The execution of an interim conveyance or patent, as appropriate, by the Bureau of Land Management which conveys an area of land selected by a Native or Native Corporation which includes, surrounds, or abuts a lake, river, or stream, or any portion thereof, shall be the final agency action with respect to a decision of the Secretary of the Interior that such lake, river, or stream, is or is not navigable, unless such decision was validly appealed to an agency or board of the Department of the Interior on or before December 2, 1980.

"(2) No agency or board of the Department of the Interior other than the Bureau of Land Management shall have authority to determine the navigability of a lake, river, or stream within an area selected by a Native or Native Corporation pursuant to the Alaska Native Claims Settlement Act or this Act unless a determination by the Bureau of Land Management that such lake, river, or stream, is or is not navigable, was validly appealed to such agency or board on or before December 2, 1980.

"(3) If title to land conveyed to a Native Corporation pursuant to the Alaska Native Claims Settlement Act or this Act which underlies a lake, river, or stream is challenged in a court of competent jurisdiction and such court determines that such land is owned by the Native Corporation, the Native Corporation shall be awarded a money judgment against the plaintiffs in an amount equal to its costs and attorney's fees, including costs and attorney's fees incurred on appeal.

"(d) For the purposes of this section, the terms 'navigable' and 'navigability' means navigable for the purpose of determining title to lands beneath navigable waters, as between the United States and the several States pursuant to the Submerged Lands Act and section 6(m) of the Alaska Statehood Act.".

SEC. 102. Nothing in this Act shall amend or alter any land exchange agreement to which the United States is a party, or any statute, including but not limited to the Act of January 2, 1976 (89 Stat. 1151) and section 506(c) of the Alaska National Interest Lands Conservation Act (94 Stat. 2409; Public Law 96–487), that authorizes, ratifies or implements such an agreement.

TITLE II—APPROVAL OF CONVEYANCE IN ALASKA NATIONAL WILDLIFE REFUGE

SEC. 201. Section 1302(h) of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96–487) is amended by redesignating the section "(h)(1)" and by adding the following new subsection:

"(2) Nothing in this Act or any other provision of law shall be construed as authorizing the Secretary to convey, by exchange or otherwise, lands or interest in lands within the coastal plain of the Arctic National Wildlife Refuge (other than land validly selected prior to July 28, 1987), without prior approval by Act of Congress.".

TITLE III—APPROVAL OF PUBLIC LAND ORDER

SEC. 301. The lands described in Public Land Order 6607 of July 8, 1985 (50 Fed. Reg. 130), comprising approximately three hundred and twenty-five thousand acres, are hereby included as part of the Arctic National Wildlife Refuge to be subject to and administered in accordance with the provisions of sections 303(2) and 304 of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96–487) and other applicable statutes.

Passed the House of Representatives August 3, 1987.

Attest: DONNALD K. ANDERSON,
Clerk.

STATEMENT
SENATOR JAMES A. McCLURE
OCTOBER 20, 1987

Good afternoon. The Public Lands, National Parks and Forests Subcommittee will receive testimony today on four measures. The four measures are:

H.R. 2629, a bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance and ownership of submerged lands by Alaska Natives, Native Corporations and the State of Alaska;

S. 1335, a bill to establish the City of Rocks National Reserve in the State of Idaho, and for other purposes;

S. 1675, a bill to provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes; and

H.R. 2566, a bill to amend the National Parks and Recreation Act of 1978, as amended, to extend the term of the Delta Region Preservation Commission, and for other purposes.

Without objection, I will place a copy of each measure in the hearing record. The hearing record will remain open for two weeks. I now ask Director Mott to come forward to testify on the City of Rocks and Hagerman Fossil Beds National Monument proposals. I would ask that witnesses summarize their statements. I have read each statement, and each will be placed in the record in full.

Before the Director provides us with the administration views, let me set the stage and share my views with him and others on these two proposals.

The City of Rocks is a collection of cathedrals, towers, bathtubs and cones rising up out of high desert country. One of the 630-foot-tall Twin Sisters is a spire 1 1/2 billion years old. Prehistoric people are believed to have lived among the strange formations in the Albion Mountains of Southern Idaho.

In more recent times, early pioneers were constantly searching for new travel routes, avoiding menacing barriers such as the Salt Desert, the Great Salt Lake, and the marshes along the upper Raft River. City of Rocks, sometimes called Silent City of Rocks, owes much of its historical significance to the proximity of these historic routes. The first practicable route to California north of the Great Salt Lake passed directly through the City of Rocks area.

The City of Rocks area provided immigrants with a passage around the hazardous marshes on the upper Raft River, as well as good campsites, water, and pasturage of their animals. Their arrival at City of Rocks was usually an occasion for rest and a respite from an arduous journey. As the pioneers climbed among the unusual rock formations, they recorded their names on the eroded granite faces. In time these rocks became covered with the names of past travelers. Members of the wagon trains not only added their names to the roster, but searched the rocks for the names of relatives and friends who had preceded them westward.

Because of vandalism and other damage to the cultural resources, and the declining condition of the remnant stage line station and homestead buildings, Senate Report No. 99-141 directed the National Park Service to study the feasibility of several management alternatives for the City of Rocks area, including management by the Forest Service, the Bureau of Land Management, the National Park Service, by the State or local units of government, or a combination of these entities. The study was completed with the active participation of these agencies and governmental units. All of the alternatives emphasize protection and public use of an area the boundary of which was mutually agreed upon by all study participants.

The report describes the manner in which the area would likely be managed under each alternative and includes estimated development and operations costs of each.

My bill, patterned after the legislation which established Ebey's Landing National Reserve in the State of Washington: (1) establishes a Reserve of 10,320 acres; (2) requires the Secretary of the Interior through the National Park Service to prepare a comprehensive plan for the area, and submit the plan within 18 months to the Governor of Idaho and the Congress; (3) requires the Secretary to transfer administration and management to the State or appropriate units of local government and provide technical and financial assistance, when the State or local units of government have enacted ordinances or established regulations which the Secretary thinks will protect and preserve the area; (4) gives the Secretary the authority to acquire Forest Serice and BLM lands in the area which are to be transferred to the Secretary and managed by the National Park Service as long as the U.S. has responsibility for management of the lands; (5) includes a reversionary clause if the Secretary determines that the Reserve is not being managed in a manner consistent with the purposes of the Act; (6) expressly reserves water rights for the Reserve; and (7) authorizes $2 million to carry out the purposes of the Act.

I will propose amendments to S. 1335 to reflect the testimony received at the field hearing in Burley, Idaho on August 19, 1987. At that field hearing there was near unanimous support for a 14,300 acre area as shown on the study maps. I recognize the acreage in S. 1335 as introduced does not provide a viable boundary, but we had to start somewhere. I also propose to add the word "historical" on page 1, line 7. I will also add "local residents" to the list of entities that the Secretary of the Interior should cooperate with in planning for the area. I wish to clarify the Secretary's authority to acquire lands and adjust the period for changes in management under subsection 3(e).

I want the National Park Service to be the lead agency in the planning, interim period and transfer, and will clarify that in the legislation if necessary. I would like to assure the Forest Service and the Bureau of Land Management that they will have a voice in planning and managing the lands that they transfer over to the State or local entities.

Director Mott, I envision the same process being used at City of Rocks as was used in Ebey's Landing and I ask for your support and help.

Let me turn to the Hagerman Fossil Beds National Monument proposal.

The Hagerman Pliocene fauna sites are among the largest and best preserved of their kind in the world. The Hagerman fossils represent the remains of a Pliocene-epoch fauna and flora three and a half million years old--species now largely extinct. During the Pliocene epoch, the Hagerman area was vastly different from the dry fossil locale of today. During the Pliocene period, the Hagerman area was comprised of an aquatic lake or marshlands. There, in an aquatic-based environment, zebra-like horses, peccaries, ground sloths, saber-tooth cats, mastodons, camels, and smaller animals such as beaver, muskrats, and others lived long before the emergence of man.

The Hagerman fossil locality is known to mammalian vertebrate paleontologists throughout the world as a classic example of late Pliocene fauna. Over 25 paleontologists have published reports on the Hagerman fauna sites--paleontologists from the United States and abroad. The stratigraphy, geomorphology, and geologic history have been investigated by the U.S. Geological Survey.

My bill would establish the Hagerman Fossil Beds National Monument of 4,394 acres in the State of Idaho. The Secretary of the Interior is authorized to acquire lands only by donation, purchase with donated funds, exchange or bequests. Existing federal lands within the Monument boundary are transferred to the Secretary and all lands within the Monument are to be managed by the National Park Service. All electrical generating and transmission and irrigation pumping and transmission facilities within the proposed Monument along with the right to operate and maintain such facilities are recognized and permitted to continue. A center for paleontological research is to be incorporated in the general management plan for the Monument. Five million dollars is authorized to be appropriated.

I have proposed legislation for the protection of the Hagerman Fossil Beds since the 93rd Congress. I am pleased that the community and others can support legislation which establishes the National Monument. The Mayor of Hagerman the Honorable Merle Owsley and the Chairman of Hagerman Fossil Beds National Monument Council H.L. Burt Holmes have journeyed far to show that support. Many others wanted to make the trip to testify, but as you can see we have many other bills to consider today and time is short. So Director Mott, please proceed.

STATEMENT BY THE HONORABLE J. BENNETT JOHNSTON

Mr. Chairman, I want to express my appreciation to you for scheduling a prompt hearing on H.R. 2566, a bill to extend the Delta Region Presidential Commission at Jean Lafitte National Park in Louisiana. This measure, which would extend the life of the Commission for an additional ten years, passed the House, without controversy, on September 29, 1987. It is supported by a large number of citizens in my state, the Louisiana Congressional delegation, and the Department of the Interior.

Unlike many Advisory Commissions, the Delta Region Preservation Commission has made numerous substantive contributions to the administration of Jean Lafitte Park. These significant contributions have been made with a minimum of expense. In fact, the annual cost for administering the Commission has consistently been less than $500 dollars.

In conclusion, Mr. Chairman, the Commission has done an outstanding job in supporting the Park Service and Jean Lafitte Park. I look forward to the rapid enactment of this legislation.

STATEMENT BY SENATOR HOWARD M. METZENBAUM

MR. CHAIRMAN, I AM VERY CONCERNED ABOUT TITLE I OF H.R. 2629. THIS SECTION WILL CONVEY OUT OF FEDERAL OWNERSHIP APPROXIMATELY 1.8 MILLION ACRES OF LAND, ACCORDING TO THE DEPARTMENT OF INTERIOR. MUCH OF THIS LAND IS CURRENTLY CONTAINED IN VARIOUS CONSERVATION SYSTEM UNITS, INCLUDING NATIONAL WILDLIFE REFUGES AND NATIONAL PARKS.

THE STATE AND THE NATIVE CORPORATIONS CLAIM THAT THIS LANGUAGE IS NECESSARY TO INSURE THAT THEY RECEIVE LANDS TO WHICH THEY ARE ENTITLED UNDER THE ALASKA STATEHOOD ACT AND THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, RESPECTIVELY. I, HOWEVER, BELIEVE THAT THE FEDERAL GOVERNMENT CAN KEEP ITS COMMITMENTS TO THE STATE AND THE NATIVES WITHOUT PASSAGE OF THIS DRASTIC LEGISLATION.

CERTAINLY, THE STATE OF ALASKA IS ENTITLED TO OWNERSHIP OF LANDS UNDERLYING NAVIGABLE WATERS. FURTHERMORE, THIS SUBMERGED LAND IS NOT COUNTED AGAINST THE STATE'S ENTITLEMENT TO 105 MILLION ACRES UNDER THE ALASKA STATEHOOD ACT. BUT WE SHOULD NOT PREMATURELY AND UNNECESSARILY CONVEY ANY ADDITIONAL FEDERAL UPLANDS UNTIL THE NEED TO DO SO HAS BEEN PROVEN.

THE STATE WILL TELL US TODAY THAT IT WISHES TO BE TREATED THE SAME AS ALL OTHER STATES WITH REGARD TO SUBMERGED LANDS. IN THE LOWER 48 STATES, LAKES OVER 50 ACRES IN SIZE AND RIVERS OVER 198 FEET WIDE ARE NOT CHARGED TOWARDS THE STATE'S LAND GRANT, BUT ARE OWNED NONETHELESS UNDER THE DOCTRINE OF RIPARIAN RIGHTS.

BUT WHILE ALASKA ASKS TO BE TREATED EQUALLY IN THIS INSTANCE, IT QUITE OFTEN ASKS FOR THE OPPOSITE: SPECIAL TREATMENT DUE TO ITS UNIQUE NATURE.

INDEED, ALASKA IS UNIQUE. THERE IS NO OTHER STATE IN THE UNION WHICH POSSESSES SUCH AN ABUNDANCE OF UNSPOILED NATURAL RESOURCES. THE LANDS WHICH WOULD BE CONVEYED BY THIS BILL ARE LANDS WHICH CURRENTLY BELONG TO THE AMERICAN PEOPLE. IT IS CLEARLY NOT IN THE PUBLIC INTEREST TO QUICKLY DISPOSE OF THESE LANDS.

MOREOVER, ALASKA HAS ALREADY ENJOYED A MORE GENEROUS STATEHOOD LAND GRANT THAN ANY OTHER STATE IN THE UNION. AS THE ONLY STATE ALLOWED TO SELECT LANDS OF ITS CHOICE, INCLUDING MINERAL LANDS, ALASKA HAS CHOSEN AND DEVELOPED EXTREMELY PROFITABLE LANDS, INCLUDING THE PRUDHOE BAY OIL FIELDS. NOT ONLY DOES ALASKA HAVE NO NEED TO COLLECT STATE TAXES, BUT IT EVEN ISSUES AN ANNUAL DIVIDEND TO EACH RESIDENT OF THE STATE. IF ANYTHING, THE FEDERAL GOVERNMENT HAS TREATED ALASKA MORE FAIRLY THAN ANY OTHER STATE.

EIGHT OF THE NATION'S LARGEST ENVIRONMENTAL GROUPS ARE STRONGLY OPPOSED TO THIS LEGISLATION. THESE GROUPS WILL SUGGEST OTHER MEANS BY WHICH WE CAN FULFILL AND PROTECT THE STATE AND NATIVE ENTITLEMENTS. I URGE MY COLLEAGUES TO CAREFULLY CONSIDER THEIR CONCERNS AND RECOMMENDATIONS. THANK YOU.

OPENING STATEMENT
SENATOR FRANK H. MURKOWSKI
SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES
SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS
HEARING ON H.R. 2629
TUESDAY--OCTOBER 20, 1987

THE REMAINDER OF THIS HEARING WILL BE ON H.R. 2629--A BILL TO CLARIFY THE TREATMENT OF SUBMERGED LANDS IN ALASKA.

TODAY MARKS THE THIRD TIME THIS SUBCOMMITTEE HAS HELD A HEARING ON ALASKA SUBMERGED LANDS LEGISLATION IN THE LAST 19 MONTHS. I HOPE IT IS THE LAST: NOT JUST BECAUSE I HAVE CHAIRED ALL THREE; BUT BECAUSE THIS IS AN ISSUE THAT SHOULD HAVE BEEN RESOLVED LONG AGO.

THE NEED FOR THIS LEGISLATION ARISES OUT OF THREE STATUTES AND OUT OF UNFAIR PRACTICES BY THE FEDERAL GOVERNMENT IN IMPLEMENTING THOSE LAWS. UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, ALASKA NATIVE CORPORATIONS ARE ENTITLED TO 44 MILLION ACRES OF ALASKA LAND. THE STATE OF ALASKA IS ENTITLED TO 104 MILLION ACRES UNDER THE ALASKA STATEHOOD ACT. IN ADDITION, BY VIRTUE OF THE SUBMERGED LANDS ACT, THE STATE IS AUTOMATICALLY ENTITLED TO SUBMERGED LANDS BENEATH ALL "NAVIGABLE WATERS" IN ALASKA. THESE SUBMERGED LANDS ARE NOT ARE IN ADDITION TO THE 104 MILLION ACRE STATEHOOD ENTITLEMENT--AND ARE NOT CHARGED AGAINST THAT TOTAL.

WHETHER A CERTAIN WATER BODY IS NAVIGABLE IS ULTIMATELY DETERMINED BY THE COURTS THROUGH LITIGATION--A COSTLY, SLOW AND COMPLICATED PROCESS. SINCE THIS CREATES GREAT UNCERTAINTY FOR THE STATES OVER SUBMERGED LANDS OWNERSHIP, THE BUREAU OF LAND MANAGEMENT (BLM) HAS ADOPTED A SURVEY MANUAL. THIS MANUAL SETS GUIDELINES ON WHAT WATER BODIES WOULD MOST LIKELY BE CONSIDERED NAVIGABLE BY THE COURTS.

GENERALLY, ANY LAKE LARGER THAN 50 ACRES AND ANY RIVER WIDER THAN THREE CHAINS IS CONSIDERED NAVIGABLE UNDER THE SURVEY MANUAL. LAKES LARGER THAN 50 ACRES AND RIVERS WIDER THAN 3 CHAINS (198 FEET) ARE ADMINISTRATIVELY EXCLUDED FROM THE FEDERAL PUBLIC DOMAIN AND NOT CONVEYED TO ANY PRIVATE PARTY ENTITLED TO THE ADJACENT UPLANDS. BY NOT CONVEYING THESE SUBMERGED LANDS IN THE FIRST PLACE, THE BLM REDUCES THE RISK OF "LAND LOSS" TO THAT PRIVATE PARTY, IN THE EVENT A COURT LATER DETERMINS THE LAND TO BE NAVIGABLE.

THIS IS A GOOD SYSTEM THAT HAS BEEN APPLIED IN EVERY STATE EXCEPT ALASKA. BEFORE 1983, A DIFFERENT STANDARD WAS APPLIED IN ALASKA. THE BLM CONVEYED SUBMERGED LANDS BENEATH ALL WATER BODIES INCLUDING THOSE GREATER IN SIZE THAN THE SURVEY MANUAL STANDARDS. THESE LANDS WERE ALSO CHARGED AGAINST THE ACREAGE ENTITLEMENTS OF THE STATE AND THE NATIVES.

THE RESULT:

--FOR NATIVES: IF A COURT DETERMINES THAT SUBMERGED LANDS ALREADY CONVEYED TO A NATIVE CORPORATION LIE BENEATH NAVIGABLE WATERS, THE CORPORATION LOSES THAT ACREAGE.

--FOR THE STATE: THE SUBMERGED LANDS TO WHICH THE STATE IS AUTOMATICALLY ENTITLED UNDER THE SUBMERGED LANDS ACT HAVE BEEN CHARGED AGAINST THE STATE'S STATEHOOD ENTITLEMENT.

--AND: LANDS WHICH RIGHTFULLY BELONG TO THE STATE HAVE BEEN CONVEYED TO THE NATIVES.

IN THE ALASKA LANDS ACT, THE CONGRESS ATTEMPTED TO RESOLVE THIS DISPUTE BY ENACTING A STATUTE OF LIMITATIONS WHICH GAVE THE STATE FIVE YEARS TO CHALLENGE THE NATIVE CORPORATIONS' OWNERSHIP OF SUBMERGED LANDS IN COURT. THIS STATUTE OF LIMITATIONS HAS NOW BEEN EXTENDED TWICE--FIRST FOR ONE YEAR, THEN FOR TWO. WE ARE NOW IN THE FIRST YEAR OF A TWO YEAR EXTENSION.

THE STATUTE OF LIMITATIONS IS NO SOLUTION. IT PUTS THE FEDERAL GOVERNMENT IN A POSITION OF FORCING UPON THE NATIVES AND THE STATE OF ALASKA NEEDLESS AND COSTLY LITIGATION. THIS IS AN ABSURD POLICY, GIVEN THAT A SIMPLE AND EQUITABLE SOLUTION EXISTS.

THE BILL BEFORE US TODAY IS SUCH A SOLUTION. IT REPEALS THE STATUTE OF LIMITATIONS, GUARANTEES THE APPLICABILITY OF THE SURVEY MANUAL TO ALASKA, AND MEMORIALIZES AN AGREEMENT BETWEEN THE BLM AND THE STATE ON HOW TO RE-WORK PAST CONVEYANCES.

THIS BILL WAS DEVISED THROUGH DISCUSSIONS BETWEEN THE DEPARTMENT OF THE INTERIOR, THE NATIVE CORPORATIONS, AND THE STATE OF ALASKA. IT HAS BEEN PASSED BY THE HOUSE AND NOW AWAITS ACTION IN THIS COMMITTEE.

I MIGHT ADD THAT H.R. 2629 ALSO CONTAINS A PROVISION REQUIRING ANY LAND EXCHANGES IN THE ARCTIC NATIONAL WILDLIFE REFUGE TO RECEIVE CONGRESSIONAL APPROVAL. WHILE I FAIL TO SEE THE NEED FOR SUCH A PROVISION--SECRETARY HODEL HAS ASSURED THIS COMMITTEE ON THE RECORD THAT ALL ANWR LAND EXCHANGES WOULD BE SENT TO CONGRESS FOR APPROVAL--I AM NOT OPPOSED TO IT.

October 16, 1987

Senator James A. McClure
United States Senate
Washington, D.C. 20510

Dear Senator McClure:

I am pleased to be writing this endorsement for national monument status for the Hagerman Fossil Beds. As you well know, the unique character of the area, with its outstanding paleontological sites, makes it a natural for the establishment of a national monument.

In review, the suitability/feasibility study proposed for the Hagerman Fauna Site in the early 1970's by the United States Department of the Interior/National Park Service found that the number one alternative for preserving the site was national monument status. The Hagerman Fauna Sites are recognized as one of the most important pliocene fauna areas in the world and one that more than adequately meets criteria employed for ascribing national significance to a paleontological area.

The community commitment for the Hagerman Fauna Site, unlike that in the 1970's, is very strong toward preserving the fossil beds and creating a tourist attraction with them. I fully endorse their effort and ask for your assistance in achieving national monument status for the Hagerman Fauna Site.

Sincerely,

Cecil D. Andrus
Governor

CDA:com

cc: Congressman Richard Stallings
Bert Holmes

Senator McCLURE. I would ask at this time that Director Mott and Associate Chief Leonard come forward to testify on the City of Rocks and the Hagerman Fossil Beds National Monument proposals.

I would ask that the witnesses summarize their statements. I have read the statements in each instance, and each will be placed in the record in full.

Before the Director provides us with the administration views, let me set the stage just very briefly on these two pieces of legislation which affect my State. I introduced both of these bills.

First, with respect to the City of Rocks National Reserve, this is an issue that has been analyzed and studied and discussed repeatedly over the last decade and a half. Every proposal we have had before has run into some kind of difficulty, in the form of local opposition, which has led to a continued discussion, not an abandonment of the idea. This continued discussion in the most recent discussions, has yielded a remarkable consensus of opinion. I say remarkable because for 20 years I have been watching disagreements, and it was very, very pleasant to me to find that now the minds of all parties seem to have come together, that the National Reserve proposal meets the needs of preservation and administration and utilization of the multiple resources in this site in a remarkably satisfying way, satisfying to all of the conflicting desires.

That consensus seems to me to give rise to very real optimism that we can pass legislation and pass it quickly, and resolve an issue that has been around for a long while in a way that satisfies most people.

The Hagerman National Fauna Monument seems to me to be the culmination of efforts that I have undertaken for nearly 20 years to recognize what is a very unique opportunity for us to preserve and interpret to the public a matter of national, international significance.

I introduced legislation once before on this subject, and I remember talking to scientists at the Smithsonian Institution about the best way to preserve that site, and they said to me at that time, the best way to preserve it is to be quiet about it because nobody knows it is there and nobody will bother it.

I think we have gotten a little beyond that now because everyone knows it is there, and there are some obvious threats to its integrity as a result of natural phenomena that may have been stimulated by irrigation on the plateau above it. Regardless of the cause of that threat or the existence of it, I still believe that there is something here that can be interpreted for the American public as well as preserved for the future of the scientific community in a way that is very helpful to a great number of people.

Having sat at the creation of the Fossil Buttes National Monument in the State of Wyoming, having looked at the Dinosaur National Monument in Colorado, having seen the opportunities at Florasant in Colorado and a number of other areas, I am more convinced than ever that this site is not only worthy of protection, but worthy of interpretation for the American public.

Again, I am hopeful that the consensus that has now arrived with respect to that site will also yield the opportunity for quick legislative enactment of what has to be only a part of the process of moving towards that ultimate goal.

Before getting into the testimony, I am reminded by staff that I should at least identify the amendments that I propose with respect to the City of Rocks proposal. Those amendments will reflect the testimony received at the field hearing in Burley, Idaho, on August 19, 1987. At that field hearing there was near-unanimous support for a 14,300 acre area as shown on the study maps. I recognize the acreage in S. 1335 as introduced does not provide a viable boundary, but we had to start somewhere, and by that means we got the public comments that were necessary.

I also propose to add the word "historical" on page 1, line 7. I will also add local residents to the lists of entities that the Secretary of the Interior should cooperate with in planning for the area.

I wish to clarify the Secretary's authority to acquire lands and adjust the period for changes in management under subsection 3(e). I want the National Park Service to be the lead agency in the planning, interim period and transfer, and will clarify that in the legislation if necessary.

I would like to assure the Forest Service and the Bureau of Land Management that they will have a voice in the planning and managing the lands that they transfer over to the State or local entities for management purposes.

With that, if I could again invite you, Director Mott, to summarize your statement.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY IVAN MILLER, MANAGEMENT ANALYST FOR PACIFIC NORTHWEST REGION, NATIONAL PARK SERVICE

Mr. Mott. Thank you, Mr. Chairman.

With regard to the City of Rocks, S. 1335, we support the reserve concept, but we suggest that the committee consider modifying the bill to provide for another lead Federal agency and to assure that once the State assumes management responsibilities, it must continue to provide necessary funding and resource protection for the area or the reserve is de-authorized and the lands returned to their former status.

With those minor modifications, and you have already spoken about one of them, I think that we support the bill.

[The prepared statements of Mr. Mott on S. 1335, S. 1675, and H.R. 2566 follow:]

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1335, A BILL TO ESTABLISH THE CITY OF ROCKS NATIONAL RESERVE IN THE STATE OF IDAHO, AND FOR OTHER PURPOSES.

OCTOBER 20, 1987

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss S. 1335, a bill to establish the City of Rocks National Reserve in the State of Idaho.

We support the concept of S. 1335, but we suggest that the Congress consider designating the U.S. Forest Service or the Bureau of Land Management as the Federal participant in the cooperative effort outlined in S. 1335.

S. 1335 would establish a City of Rocks National Reserve, consisting of approximately 10,320 acres located in south central Idaho to preserve and protect significant cultural resources, manage recreational use, protect and maintain scenic quality, and interpret the values of the Reserve. Of the 10,320 acres, approximately 3,960 acres are under the jurisdiction of the Bureau of Land Management, approximately 3,040 acres are under the jurisdiction of the U.S. Forest Service, and approximately 3,320 acres are in private ownership and could only be acquired by donation or with donated funds or exchange. The Secretary of the Interior, at an appropriate time in accordance with a comprehensive plan, would transfer management over acquired lands to the State or local government, provide technical assistance, and make periodic grants to the State or local governments for annual costs of operation and maintenance up to 50 percent of the total annual cost.

If after transfer of the management to the State, the Secretary determines that the reserve is not being managed in a manner consistent with the purposes of the Act, and if after notification the recommended modifications are not made to make management consistent with the plan, the Secretary shall withdraw the management from the transferee and he shall manage such lands in accordance with the provisions of the Act.

City of Rocks is a name given to an area in southern Idaho containing huge freestanding granite domes. The area was designated as a national historic landmark on October 24, 1963. City of Rocks has been recognized for almost a century and a half as an outstanding California Trail attraction. Thousands of gold hunters, rushing to California in 1849, had seen nothing like the rock formations before, and City of Rocks quickly gained fame. Few emigrant road landmarks are as notable as City of Rocks.

With significance deriving primarily as an emigrant stopping point, complete with register rocks where travelers signed their names, this area also commands geological attention. Aside from scientific investigation, it is important as a natural feature that stimulated a great deal of popular interest in western geology.

No other practical route to northern California was available south of City of Rocks and Granite Pass, so emigrant traffic using earlier Fort Hall or later Hudspeth Cutoff or Salt Lake alternate routes all had to come through the area.

Because of its history as well as its spectacular geological formations, we support Congressional recognition of the City of Rocks through the designation of this area as a national reserve. The national reserve concept -- developed by the Congress for Ice Age in Wisconsin and at Ebey's Landing National Historical Reserve in the state of Washington -- is based on the concept that the protection of this area will be accomplished through a partnership between State and Federal governments. We agree that the national reserve designation, with State and Federal cooperation, is appropriate for the City of Rocks area.

We suggest, however, that, rather than having the National Park Service become newly involved as a land managing agency in the area, the Congress should consider identifying either the Bureau of Land Management, which already administers 3,960 acres in the proposed reserve, or the U.S. Forest Service, which administers 3,040 acres, as being the major Federal partner in this area. If the Committee does act favorably on the bill, we would be pleased to work with staff to provide a boundary map for reference at page 2, line 4 of the bill.

We recommend further that section 3(e) be amended. Currently this section provides for the reversion of management and administration responsibility to the Secretary of the Interior if the non-Federal managers fail to comply with the purposes of the Act. We believe that participation by non-Federal partners is essential to the national reserve concept. Therefore, we recommend that should the appropriate Secretary determine that adequate management and protection as set down in the comprehensive management plan are not being provided or that matching funds are not being provided by the State or other non-Federal sources, then the lands should be returned to their former status, subject to any necessary provisions to protect the resources, and the reserve itself should be deauthorized.

We further recommend that if the Committee determines that the National Park Service should be the managing Federal agency, then the transfer of Federal lands from the Forest Service and Bureau of Land Management to the National Park Service be made effective immediately prior to transfer of management responsibility to the State. This will assure maintenance of the status quo until such time as it is clear that the State will assume management responsibility.

We note that the bill authorizes the appropriation of $2 million to carry out the purposes of the Act. The $2 million authorization would apply to matching grants to the State for operation and management. The State estimates that operating costs will be approximately $175,000 per year. One-half of this amount is $87,500, which would be the maximum annual Federal grant under the bill.

In summary, Mr. Chairman, we support the reserve concept.

This concludes my prepared remarks, Mr. Chairman. I would be pleased to respond to any questions.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING S. 1675, A BILL TO ESTABLISH THE HAGERMAN FOSSIL BEDS NATIONAL MONUMENT IN THE STATE OF IDAHO, AND FOR OTHER PURPOSES.

OCTOBER 20, 1987

Mr. Chairman and Members of the Committee, it is a pleasure to appear before you today to discuss S. 1675, a bill to establish the Hagerman Fossil Beds National Monument in the State of Idaho.

We do not object to enactment of S. 1675.

S. 1675 would establish the Hagerman Fossil Beds National Monument, consisting of approximately 4,394 acres of publicly owned land located in south-central Idaho, to preserve and interpret the significant paleontological resources found there. Located within the proposed boundary are approximately 492.87 acres of State land, which could only be acquired by exchange. Federal land would be transferred to the Secretary of the Interior for purposes of this Act. There is a Congressional reservation of water, which shall be perfected under the laws of the State of Idaho. The provisions of the Federal Power Act shall continue to apply to existing projects. Further, during consideration of a general management plan, the Secretary is directed to incorporate provisions for the orderly and regulated use of and research of the area by qualified individuals and institutions. Finally, there is authorized to be appropriated not to exceed $5,000,000.

The Hagerman fauna area on the western slope of the Snake River canyon in south-central Idaho is one of the most important locations of upper Pliocene fossils in the world. The fossils obtained from this locale represent the richest known concentration of late Pliocene land vertebrate remains. Scientists from the Smithsonian Institution, the University of

California at Berkley, the California Institute of Technology, the University of Michigan, the Natural History Museum of Los Angeles County, and the Idaho State University Museum have made large collections of fossils from these strata. Individual specimens are located in museums worldwide. There is a correspondingly large body of scientific literature relevant to this site. Unquestionably, the site posses scientific value of international importance. In a 1972-74 study, the National Park Service concluded that the area would be an appropriate addition to the National Park System. In 1975, the Secretary of the Interior designated the Hagerman Fauna Sites as a National Natural Landmark in recognition of its paleontological value. The Bureau of Land Management currently manages Federal lands within the area and has designated it as an Area of Critical Environmental Concern.

Under section 12(b) of the Act of August 18, 1970, as amended (16 U.S.C. 1a-7(b)), the National Park Service is required to prepare general management plans for the preservation and use of each unit of the National Park System. Such plans must include measures for the preservation of the area's resources, potential developments, and potential modifications to the external boundaries.

We estimate that the general management plan will cost approximately $250,000 and will take between eighteen and twenty-four months to complete. Other costs associated with this proposal include an estimated annual operating cost of approximately $150,000 and 3 FTE's. We assume the limitation on appropriations of $5 million in section 7 of the bill is not intended to apply to ongoing operation and maintenance costs, but rather to capital costs for roads and trails and facility development. Cost estimates for these facilities will be included in our general management plan. We have no studies to support the authorization level in the bill.

We recommend three technical amendments: Subsection 2(b) should be reworded to withdraw Federal lands from the mining and mineral leasing and Geothermal Steam laws, since these lands are already administered by the Secretary of the Interior; subsection 2(d) should be deleted, since we have general authority for exchanges; and section 3 should be amended to delete the reference to establishment of the monument since this Act establishes the monument with no further administrative action necessary.

That concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions that you or other Members of the Committee may have.

STATEMENT OF WILLIAM PENN MOTT, JR., DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS & FORESTS, OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES CONCERNING H.R. 2566, A BILL TO EXTEND THE DELTA REGION PRESERVATION COMMISSION FROM TEN TO TWENTY YEARS.

OCTOBER 20, 1987

Mr. Chairman and Members of the Committee, it is a pleasure to be here today to discuss H.R. 2566, a bill to extend the Delta Region Preservation Commission at Jean Lafitte National Historical Park, Louisiana, for an additional ten years. H.R. 2566 was passed by the House of Representatives on September 29, 1987.

We recommend enactment of H.R. 2566.

As passed by the House of Representatives, H.R. 2566 would extend the term of the Delta Region Preservation Commission from ten to twenty years.

The region of New Orleans and the western Acadian parishes of the Mississippi River delta have long been known for their varied cultures -- cultures in contact with land, river, marsh, and sea, and in contact with each other. On November 10, 1978 (Public Law 95-625), the national importance of this region was recognized; and the National Park Service was directed to establish the Jean Lafitte National Historical Park for the purpose of preserving for the education, inspiration, and benefit of present and future generations significant examples of natural and historical resources of the Mississippi Delta region and to provide for their interpretation in such manner as to portray the development of cultural diversity in the region.

The park includes units in the Barataria and Big Oak Island area, the former Chalmette National Historical Park, and interpretive and administrative facilities in the French Quarter of New Orleans.

The authorizing legislation also provides for inclusion, by cooperative agreements, of other natural and cultural resources representative of the development of regional cultural diversity. Historical forts and plantations and areas such as the Garden District of New Orleans and Acadian towns and villages were suggested as the kinds of resources that may be considered for potential cooperative units. The National Park Service was directed to interpret cultural diversity and to preserve the basis for continuation of that diversity in a cooperative program with public and private entities as well as to provide visitor activities and use of the sites.

The authorizing legislation also established the Delta Region Preservation Commission to advise the National Park Service in the selection of cooperative agreements and in the development and implementation of a general management plan and a comprehensive interpretive program. Also, as stated in the Commission's charter, "the commission shall inform interested members of the public, the State of Louisiana and its political subdivisions, and interested Federal agencies with respect to existing and proposed actions and programs having a material effect on the perpetuation of a high-quality natural and cultural environment in the delta region."

The accomplishments of the Delta Region Preservation Commission are many, but I would like to highlight just a few:

1. The Commission was instrumental in voicing its concerns about the failure of Jefferson Parish to adequately treat and dispose of sewage. As a result, the Environmental Protection Agency imposed a deadline on the parish for

upgrading its sewage treatment facilities. Pollution of the Barataria estuary from poorly treated sewage threatened the continued viability of the oyster industry, which was vital to the perpetuation of traditional lifeways practiced by Yugoslavs, Acadians, Islenos, and other culture groups in the delta.

2. The Commission has provided guidance to the National Park Service in the selection of the Acadian culture centers and in selecting and making the site available for the existing Islenos culture center.

3. The Commission was instrumental in convincing the State legislature to pass a law authorizing the donation of land to the Barataria Unit of Jean Lafitte National Historical Park.

4. The Commission was responsible for the Governor's authorization of concurrent law enforcement jurisdiction for National Park Service personnel at cooperative agreement sites.

Mr. Chairman, the Commission has done an exemplary job in helping to support the National Park Service mission at Jean Lafitte National Historical Park. It is vital to the successful selection of future cooperative agreement sites in the delta region and is vital to helping sustain the indigenous cultural traditions and regional character of the delta. Further, the annual cost for administering the Commission has always been under $500; and, although entitled to reimbursement for reasonable expenses, Commission members have never asked for such reimbursement from the National Park Service.

That concludes my prepared statement, Mr. Chairman. I would be happy to respond to any questions that you or other members of the Committee may have.

Senator McClure. Thank you very much, Mr. Director.

Mr. Leonard.

STATEMENT OF GEORGE M. LEONARD, ASSOCIATE CHIEF, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Leonard. Mr. Chairman, thank you for the opportunity to present the views of the Department of Agriculture.

We are, of course, involved only in the City of Rocks and not the Hagerman Fossil Beds.

We have recognized for a long time the significant historical value of the City of Rocks and have been engaged with the local governmental organizations as well as the Bureau of Land Management and the State of Idaho in attempting to administratively provide some protection for this area. Consequently, the Department of Agriculture supports the concept of designating the City of Rocks as a national reserve.

However, we are suggesting that the bill be amended to designate either the Bureau of Land Management or the Forest Service as the lead agency in developing the plan simply because the two agencies are there in location, and we think it would be more economical to deal with those agencies in place.

Other than that, I think that will summarize my statement.

[The prepared statement of Mr. Leonard on S. 1675 and S. 1335 follows:]

STATEMENT OF
GEORGE M. LEONARD, ASSOCIATE CHIEF
FOREST SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE

Before the
Subcommittee on Public Lands, National Parks and Forests
Committee on Energy and Natural Resources
United States Senate

Concerning S. 1675, Hagerman Fossil Beds National Monument
and
S. 1335, City of Rocks National Reserve Act of 1987

October 20, 1987

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

Thank you for the opportunity to offer the Department of Agriculture's views on two bills before the Subcommittee; S. 1675, a bill "To provide for the establishment of the Hagerman Fossil Beds National Monument in the State of Idaho, and for other purposes." and S. 1335, a bill "To establish the City of Rocks National Reserve in the State of Idaho, and for other purposes."

We defer to the Department of the Interior on S. 1675 since enactment of this bill would not affect this Department's programs or National Forest management.

The Department of Agriculture recommends that S. 1335 not be enacted unless amended as we suggest.

S. 1335 would establish a 10,320-acre City of Rocks National Reserve to preserve and protect the cultural resources, to manage recreational use, to protect and maintain scenic quality, and to interpret the nationally significant values of the Reserve. The Secretary of the Interior, in cooperation with the appropriate State agencies and local units of general government, would formulate a comprehensive plan for the protection, preservation, and interpretation of the Reserve. Lands and waters administered by the Forest Service and the Bureau of Land Management would be transferred to the jurisdiction of the National Park Service. If certain conditions are met, the Secretary of the Interior would transfer management of the Reserve to the State of Idaho or other appropriate units of local government.

The City of Rocks, located in southeastern Idaho, is an area of numerous rock spires, some more than 60 stories high. Named by immigrants passing through on the Oregon-California Trail in the 1850's, the historic and geologic features offer a variety of recreational opportunities. Visitors can view names of immigrants written with axle grease on one of the rocks.

The City of Rocks gained national historic significance in 1964 when it was placed on the National Register of Historic Places. In 1974, the natural significance of the City of Rocks was recognized when it was included on the National Registry of Natural Landmarks.

Since 1905, the Sawtooth National Forest has managed and protected 3,040 acres of the approximate 14,000 acres within the City of Rocks boundary as proposed by the 1986 National Park Service Study. These National Forest System lands are located in the northwest corner of the Reserve S. 1335 would establish.

The Forest Service, along with many others, recognizes the diverse values to be managed in the City of Rocks. Newspaper articles as far back as the 1920's have reflected the need for some form of protection for this area. Through the years, the Sawtooth National Forest has participated in planning and management of the area.

In 1984, the Forest Service was instrumental in establishing an interagency management group for the City of Rocks. This group includes the Bureau of Land Management, Cassia County, the Forest Service, and the State of Idaho Departments of Fish and Game and Parks and Recreation. We have aggressively pursued the development of a Memorandum of Understanding among these agencies to combine efforts to protect and maintain the area and develop a comprehensive management plan. As a result, over the past 2 years, a great deal of on-the-ground work has been accomplished. Working together, accomplishments have included signing, stationing of a seasonal "ranger" at the City, sanitation facilities, publication of the City of Rocks public information handout, and numerous resource improvement projects.

The Sawtooth National Forest Land and Resource Management Plan proposes that the National Forest lands within the City of Rocks be designated as a Special Interest Area. Under this designation, the National Forest lands would be managed for their special historic, geologic, recreational and botanical values. In addition, the Plan also directs continued participation with other agencies in the coordinated management and protection of this area.

Consequently, the Department of Agriculture supports the concept of designating the City of Rocks as a National Reserve. However, we recommend that S. 1335 be amended to designate either the Bureau of Land Management or the Forest Service as the "lead agency" in management and protection of this area. Giving the lead responsibility to either agency would provide stability, continuity, and a local perspective.

The bill should also be amended to recognize and encourage the existing jurisdictional responsibilities and the partnerships that have been developed to manage the area. We are confident that the partnership approach provides an adequate and appropriate mechanism for cooperative management. Continuation of this approach would be far less expensive than designating another Federal agency to manage the entire area.

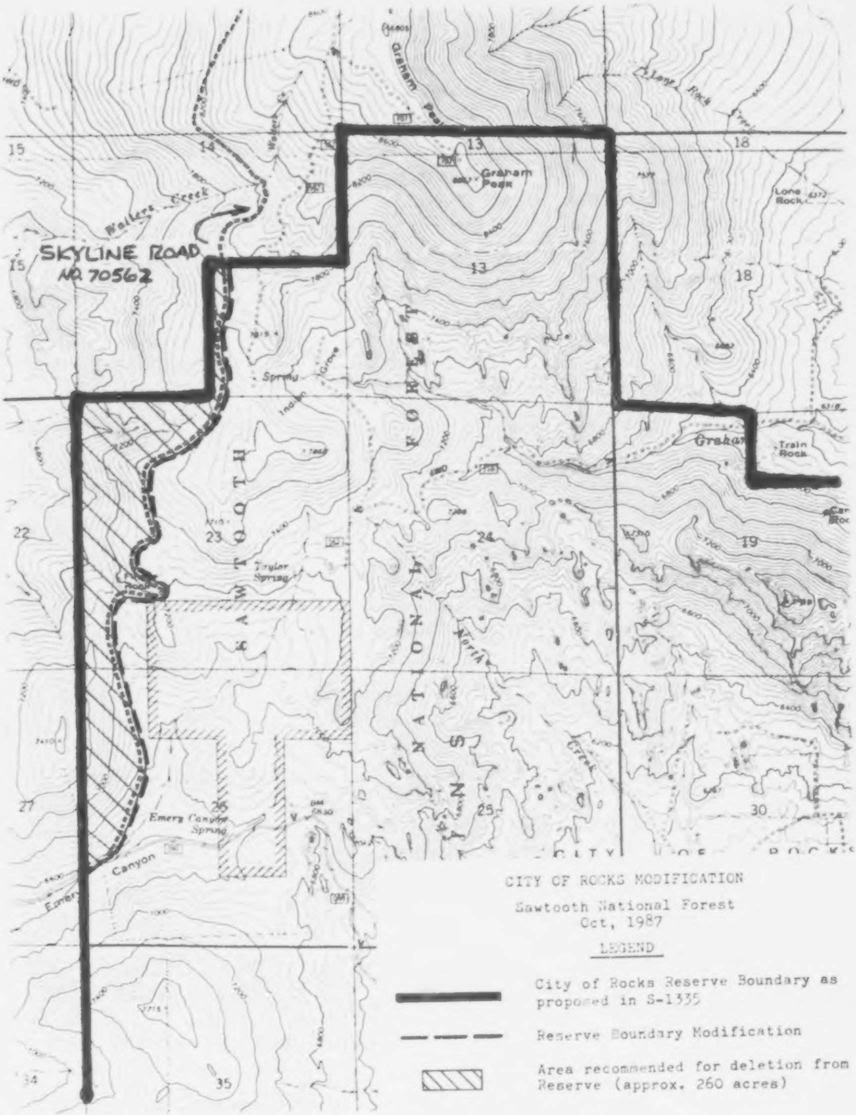
We support the provisions of S. 1335 that would require the development of a comprehensive management plan for the City of Rocks. Again, however, we recommend that the bill be amended to accomplish the planning under the concept of a lead Federal agency, in cooperation and coordination with the other entities in the existing interagency group.

S. 1335 should be amended to delete the provision for transferring management and administration of Federal lands between agencies or to the State or appropriate units of local government. Under the lead agency concept of management we recommend, such transfers would be unnecessary. We would oppose any transfer of Federal lands to State or local jurisdictions without appropriate compensation to the Federal government.

Based on our knowledge of this area, and our experience in planning and managing other areas of national significance and similiar complexity, the Forest Service should be an active participant in any administrative structure that is eventually established for the City of Rocks.

In summary, we support the concept of a National Reserve designation for the City of Rocks. We recommend that S. 1335 be amended to recognize the existing management structure as defined by the Memorandum of Understanding. We also recommend that a "lead agency" be established to coordinate planning and management. The provision to transfer Federal lands to the State or a local jurisdiction should be deleted.

Mr. Chairman, this concludes my statement. I would be happy to answer your questions or provide any additional information you may desire.


SKYLINE ROAD
NO. 70562
Walters Creek
Graham Peak
Lone Rock
Train Rock
Taylor Spring
Indian Grove Spring
Emery Canyon Spring
Emery Canyon
SAWTOOTH NATIONAL FOREST
CITY OF ROCKS
North Creek
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CITY OF ROCKS MODIFICATION

Sawtooth National Forest
Oct, 1987

LEGEND

━━ City of Rocks Reserve Boundary as proposed in S-1335

— — — Reserve Boundary Modification

▨ Area recommended for deletion from Reserve (approx. 260 acres)

Senator McClure. Do either of you have comments with respect to the boundaries of the proposed City of Rocks or the acreage to be included within the area?

Mr. Leonard. We have a map with us that shows a possible change in the boundary line which would use a road rather than a section line in the northwest corner that we will be able to provide the committee.

It is not shown on there, but it would involve running the boundary line along this road here, which is a more easily defined location, and we would be pleased to provide the committee with a map.

Senator McClure. If you would do so, please.

Mr. Mott?

Mr. Mott. Mr. Chairman, I think that in our original study of this area we recommended some additional property, if you want to point that out, and also in the upper end and lower areas.

Mr. Miller. The bill, as written——

Senator McClure. Please, would you state your name for the record, please?

Mr. Miller. My name is Ivan Miller. I am a management analyst for the Pacific Northwest region of the National Park Service.

Senator McClure. Thank you.

Mr. Miller. The bill would address a core area shown in the color legend here and also an exterior boundary of some additional lands which would bring it up to the 14,000 acre size. We would like to see these lands included for their scenic values and only rely upon local zoning easements or local zoning arrangements to control activities within that area.

Senator McClure. Now, in the color coding on your map, if I read it correctly, and I hope I can read it from here, the green is U.S. Forest Service lands, the brown is Bureau of Land Management lands, and the red is State lands; the white would be private lands, is that correct?

Mr. Miller. That is correct.

Senator McClure. Thank you.

I heard an irreverent comment over my shoulder that said why are the Forest Service lands painted green?

Mr. Leonard. We are always green.

Senator McClure. I understand. The rocks are not.

Do either of you have further comments?

Mr. Leonard, in your prepared statement there was some concern about the transfer of lands. My understanding is that the concerns expressed would be primarily addressed to the management entity, and secondly, the entity which would have the lands within its ownership under Federal statute.

My understanding of the legislation as ~~it is~~ presented is that no land that is now Federal land would be transferred out of Federal ownership and that the only thing that happens as the reserve is brought to fruition in management is that a different entity might manage those lands.

Is that your understanding?

Mr. Leonard. Well, my understanding was that when the plan was completed and the area was brought up to the ultimate ownership, that the management responsibilities would be passed to a State agency.

Senator McClure. But not title to the lands.

Mr. Leonard. I may have misread it. I assumed the title to the land, but it may not.

Senator McClure. The fact is, under the proposed legislation, the title would remain vested in the Federal Government with the provision indicated by Director Mott, that it would be managed by a different entity, perhaps the State and perhaps not, but that in the event that it were not managed for the purposes established in the legislation, the management would revert to the Federal Government under any case.

I think the operative language, if you have the bill in front of you, would be section 3(c)(1) that appears on page 3, line 19. That is the only transfer from the Federal Government, and that would be the management administration, which would be applied.

Mr. Leonard. Then our comments about the costs would not be applicable.

Senator McClure. Thank you very much.

If I could turn a moment, Mr. Director, to the Hagerman Fossil Beds. You have not yet addressed that.

Do you have a statement with respect to the Hagerman Fossil Beds?

Mr. Mott. Yes. We recommend enactment of the Hagerman Fossil Beds, S. 1675. There are three technical amendments that we recommend in connection with that bill. Subsection (2)(b) should be reworded to withdraw Federal lands from the mining and mineral leasing and geothermal steam laws since these lands are already administered by the Secretary of the Interior.

Subsection (2)(d) should be deleted since we have general authority for exchange.

And Section 3 should be amended to delete the reference to establishment of the monument since this act establishes the monument with no further administrative action necessary.

Those are minor changes that we would recommend.

Senator McClure. Thank you very much.

Mr. Mott, I understand that this area was designated as a national landmark in 1975. Section 8 of the Act of August 18, 1970, as amended, requires a submission to Congress every year of a list of landmarks which "exhibit known or anticipated damage or threats to the integrity of their resources."

Has the Hagerman site been included in any such list of threatened landmarks?

Mr. Mott. Yes, and I would like to introduce into the record this letter that we sent to the President relative to the dangers that we have anticipated or are existing. We are required to make a report each year of these situations, and that will give you the information.

Our concern is the irrigation of the farmlands above where the water comes down and erodes the cliffs, which is causing some damage to the fossil bed area.

Senator McClure. Is that a letter of March 16, 1987, addressed to the Honorable George Bush, President of the Senate?

Mr. Mott. That is correct.

Senator McClure. And attached to it is a condition report with respect to the Hagerman fauna site.

Mr. Mott. Yes.

Senator McClure. That letter and the attachment thereto will be made a part of the record.

[The letter referred to follows:]

THE SECRETARY OF THE INTERIOR
WASHINGTON

MAR 16 1987

Honorable George Bush
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

I am herewith submitting to the Congress the 1986 Section 8 Report on National Historic and Natural Landmarks that have been damaged or to which damage to their integrity is anticipated. This report was prepared pursuant to section 8 of the Act of August 18, 1970, as amended by section 2 of the Act of October 7, 1976 (P.L. 94-458; 90 Stat. 1939).

For Fiscal Year 1986, 86 National Historic and Natural Landmarks were identified as having existing or impending damage to the integrity of their nationally significant features. This number represents 4 percent of all designated National Natural and Historic Landmarks and is approximately the same percentage as that for preceding years.

In Fiscal Year 1986, the National Park Service was able to report on the condition and integrity of 61 percent of the 573 designated National Natural Landmarks, and to field-check 55 percent of those sites reported. This represents a significant accomplishment by a variety of National Park Service staff, as well as many non-Service persons who volunteered their time and expertise toward this important activity.

The National Park Service continued to provide increased technical assistance to endangered National Historic Landmarks (NHLs) during this fiscal year. Condition assessment reports are developed for each of the NHLs inspected. These reports are made available to owners, preservation organizations, and interested public and private groups to assist NHL owners in prioritizing expenditures and in obtaining technical and financial assistance for carrying out the recommendations of each condition assessment report.

We will continue to encourage the preservation of both National Natural and National Historic Landmarks by focusing the attention of Federal, State and local agencies and private organizations and individuals on these nationally significant areas.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

Enclosure

Idaho

Name: **HAGERMAN FAUNA SITES**

Location: Twin Falls County

Ownership: Federal (Bureau of Land Management), State (Department of Parks and Recreation)

Designation: May 1975

Section 8 Listings: Annually since 1977

Significance: The site contains the world's richest known deposits of Upper Pliocene terrestrial fossils and therefore is considered to be of international significance.

Description: A 4,187-acre tract that contains fossil exposures distributed through about 550 feet of stratigraphic section within the hills and cliffs bordering the west bank of the Snake River.

Threat or Damage: Source activities

agricultural irrigation
visitor use - OHV activity

Resource Impacts

FOSSIL RESOURCES--erosion of exposures and structural disturbance of stratigraphy

Summary

Accelerated soil movement caused by surface-water runoff from irrigated farmlands on the plateau above and west of the river canyon and by discharge from springs and seeps along steep, east-facing slopes of the canyon continues to erode the fossil beds. Gullying has occurred in a large portion of the site, and fossils have been washed away. A large earthflow caused by subsurface soil saturation is the most visible evidence of erosion and likely will continue to disrupt fossiliferous strata, as long as seepage from springs remains active.

Approximately 32 acres have now been disturbed, and it is estimated that 200,000 yards of material have sloughed off, extending the slump face from 70 to 120 feet. Because earthflow movement disrupts local stratigraphy, the scientific and educational value of areas affected has been considerably diminished.

The principal sources of surface-water runoff are excess irrigation water and the periodic flushing of sprinkler valves. The source of the springs and seeps is a perched aquifer, which is probably recharged by seepage losses from two irrigation canals that head near the canyon rim and are supplied by water pumped from the Snake River. The precise nature and extent of the perched aquifer is unknown, however.

Damage to exposed fossils and erosion caused by off-highway vehicles (OHV's) has decreased in northern portions of the landmark since BLM's OHV closure of that area. In the south portion, however, OHV activity continues, and signs emplaced there by BLM have been damaged.

Current Situation:

A hydrologic study completed by the U.S. Geological Survey 1984 (USGS Water-Resources Investigations Report 84-4137), recommended the following corrective measures: (a) lining or treating the canals; (b) eliminating the practice of flushing irrigation systems; (c) constructing road berms and cross dips; and (d) establishing an uncultivated strip of land between irrigated farmlands and the canyon rim. The Bureau of Land Management (BLM) has proposed designation of the entire site as an Area of Critical Environmental Concern (ACEC) and has included it within the Jarbidge resource management plan (RMP). This RMP was published for public review on September 25, 1985, and is awaiting resolution of eight protests unrelated to the ACEC before implementation. In addition, a watershed activity plan approved on April 10, 1985, included provisions that at least 1/2 mile of irrigation canals be lined; however, a decision was made early in Fiscal Year 1986 to extend study of the problem by installation of 11 monitoring wells in order to determine the exact source of the springs and to insure that the canal lining is designed so as to solve the problem. BLM plans to continue monitoring the wells after the canals are lined to evaluate the success of the project. The watershed activity plan also included gathering spring flow data needed to evaluate the nature of the flow. BLM continues to explore the possible acquisition of some lands along the western boundary in order to move farming activities farther westward away from the top of the bluffs. BLM also identified and relocated back onto private lands two trespass irrigation lines. BLM is working with Bell Rapids Irrigation District to study the canal leakage problem and develop mitigating measures.

A boundary fence was being installed in September 1986 and BLM grazing was terminated. The State has not renewed the grazing lease on Section 16. There was no seasonal employee at the site in 1986, nor are there any plans for hiring one.

Recommended Actions:	Efforts to mitigate the damage to fossil beds caused by irrigation runoff should continue. In addition, a seasonal on-site employee is still needed to enforce the closure of areas off-limit to OHV's, and to ensure the protection and appropriate management of these internationally significant resources.

Mr. MOTT. Thank you.

Senator MCCLURE. Thank you.

Do either of you have any further comment?

If not, gentlemen, thank you very much for your testimony.

Mr. Mott, I think you also have comments with respect to H.R. 2566, a bill to amend the National Parks and Recreation Act of 1978, as amended.

Mr. MOTT. This is with regards to——

Senator MCCLURE. The Delta Region Preservation Commission.

Mr. MOTT. Yes. We would recommend that that commission be continued.

Senator MCCLURE. Your statement will be made part of the record in full. I thank you for your testimony.

We will then turn to the panel of public witnesses, Mr. Merle Owsley, Mayor of Hagerman; and Mr. H. L. Burt Holmes, Chairman of Hagerman Fossil National Monument Council from Hagerman, Idaho.

Welcome, gentlemen. We are glad to have you here.

As I have indicated to the other witnesses, your entire prepared statement will be made a part of the record in full. You will be invited to summarize and tell us what you would like us to know about your position with respect to the Hagerman fauna site.

Mr. Owsley.

STATEMENT OF MERLE E. OWSLEY, MAYOR, CITY OF HAGERMAN

Mr. OWSLEY. Mr. Chairman, I have not condensed this.

Senator MCCLURE. I wonder if you could pull the microphone directly in front of you.

Mr. OWSLEY. I have not condensed this, and I do not have a map like those other gentlemen.

The Hagerman Fossil Beds were discovered in 1919 by a local farmer, and they have existed for 3½ million years prior to that discovery. We have had paleontologists from the Smithsonian Institute as well as the University of Michigan, the Los Angeles County Museum and the Idaho State University Museum. Each year we have some spring winds that blow away the desert and expose more fossils for surface collecting, which is done annually by the Idaho State University.

The area has 310 registered fossil sites. In 1975 this fossil area of more than 4,000 acres was declared a national landmark, a status with no funds attached. Currently this area is almost completely owned and administered by the Bureau of Land Management.

A Bureau of Land Management priority was to buy all the land surrounding the area to protect it from the surface erosion and groundwater problems. They have recently made arrangements with the farming co-op that operates above the site to line an irrigation ditch to prevent further runoff and seepage.

We feel that Senator McClure's bill to classify the Hagerman Fossil Beds as a national monument is an idea whose time has indeed come. Public sentiment is behind the push to make the beds available to a wider audience.

While we agree that Bureau of Land Management's objective to protect this site from further deterioration is an absolute must, we cannot overlook the tremendous potential this area provides for education and tourism. In these economically depressed times of inflation and uncertain futures for farmers, this could create an extraordinary boost to the local economy. It would be a ripple effect throughout, including the county, Twin Falls County, Jerome County. The development of tourist facilities in our area is already in the preliminary planning stages. These plans range from roads, roadside motels, RV parks, museum, picnic areas, ferry boats, nature trails and so forth.

In this era of adventure vacations where the new trend is for families to go somewhere and do something exciting besides just drive and look, our valley is tailor made. After they come to see our fossil beds and perhaps even dig their own fossils from supervised areas, we could then direct them to a variety of other points of interest, all within a short distance.

There is a 1,000 Springs Scenic Resort Area ten minutes from Hagerman, as well as boating, hunting, fishing and swimming attractions. An hour away they would be able to see Shoshone Falls, rivaled only by Niagara Falls itself.

It is a paradise for vacationers.

And I thank you for letting me appear here today. I have condensed that. It is not the way I wanted to present it, but it has been presented, sir.

[The prepared statement of Mr. Owsley follows:]

CITY OF
HAGERMAN

The Hagerman Fossil Beds were discovered in 1919 by a local farmer. They had existed on the hillsides west of Hagerman for 3½ million years prior to that discovery. Now they are in danger of becoming as extinct as the animals whose fossils have been dug up there. A landslide that occurred there in April brought this fact to national attention.

The Hagerman quarry is world famous because it has the best variety, quality and quantity of fossils IN THE WORLD for the Pleistocene-Epoch. It is not to be matched anywhere. The discoveries made there changed the way paleontologists view our planet's history.

From 1929 to 1934 the quarry was excavated by paleontologists from the Smithsonian Institute as well as the University of Michigan, the Los Angeles County Museum and the Idaho State University Museum. Each year, spring winds blow away desert sand to expose more fossils for surface collecting which is done annually by the Idaho State University.

The area has 310 registered fossil sites, including the half acre horse quarry which has yielded more than 130 complete "Equus Idahoensis" horse skeletons. Other fossils unearthed include fish, snails, mammoths, camels, saber-toothed tigers, frogs, otters, ducks, pigs and giant ground sloths. Birds, which are a rare find because of fragile, hollow bones, have been found carefully preserved in the Hagerman bog. In all, 110 vertebrae animals have been identified from this area. Large fossil deposits still remain.

In 1975 this fossil area of more than 4,000 acres was declared a National Landmark, a status with no funds attached. Currently this area is almost completely owned and administered by the Bureau of Land Management.

The Landmark was closed in 1985 to off-road vehicles because of the surface damage that they were causing. After 3½ million years, it appears that we are now in danger of losing this valuable natural resource to landslides, erosion from various sources, and maybe human oversight. A Bureau of Land Management priority was to buy all the land surrounding the area to protect it from surface erosion and ground water problems. They have recently made arrangements with the farming co-op that operates above the site, to line an irrigation ditch with concrete to further prevent water run-off and seepage into the already unstable ground. However, they have no plans to develop the fossil bed site.

We feel that Senator McClure's bill to classify the Hagerman Fossil Beds as a National Monument is an idea whose time has indeed come. Public sentiment is behind this push to make the beds available to a wider audience. The Hagerman Fossil National Monument Council was formed in September to further assist in attaining the monument status. The bill will preserve the fossil beds for present and future generations and provide a center for continuing paleontological research.

While we agree that the Bureau of Land Management's objective to protect this site from further deterioration is an absolute MUST, we cannot overlook the tremendous potential this area provides for education and tourism. Estimates range from 100.000 to 500,000 tourists that would visit the developed fossil beds each year. Summertime traffic flow through the city of Hagerman could reach 2,800 cars per day!

In these economically depressed times of inflation and uncertain futures for farmers, this could create an extraordinary boost to the local community. The development of tourist facilities in our area are already in the preliminary planning stages. These plans range from roads, road signs, motels and RV parks to museums, picnic areas, ferry boats and nature trails.

In this era of "adventure vacations", where the new trend is for families to go somewhere and do something exciting besides just drive and look, our valley is tailor made. After they come to see our fossil beds and perhaps even dig their own fossils from supervised areas, we could then direct them to a variety of other points of interest, all within a short distance. There is our 1000 Springs Scenic Resort Area, 10 minutes from Hagerman, as well as boating, hunting, fishing and swimming attractions. An hour away they would be able to see Shoshone Falls, rivalled only by Naigara Falls itself. The Hagerman Valley virtually abounds with spectacular scenic opportunities and adventures. We could really be a "Vacationer's Dream of Paradise"!

The increased tourist interest would not only benefit the Hagerman community, but cause a ripple effect whose impact would be felt throughout the entire state of Idaho.

Help us realize our dream and support Senator James McClure's bill to make the "World Renowned Hagerman Fossil Beds" a National Monument. We cannot urge you strongly enough, to help in the effort to preserve and develop this irreplaceable historical treasure!

Merle E. Owsley

Submitted by:

Merle E. Owsley

Mayor

City of Hagerman

Senator McClure. Thank you very much and your prepared statement has been placed in the record in full. I appreciate your coming here all this distance to testify and to express the concerns and aspirations of the local people.

Mr. Holmes.

STATEMENT OF H. L. BURT HOLMES, CHAIRMAN, HAGERMAN FOSSIL NATIONAL MONUMENT COUNCIL

Mr. Holmes. Yes, Mr. Chairman, I will reduce this considerably. I would like to mention ahead of that, though, the letters that I brought with me supporting. I brought a letter from Governor Cecil D. Andrus to yourself, which you read; a letter from John Peavy of the Idaho State Senate; a letter from Ralph Peters, House of Representatives; a letter from the City of Hagerman; a letter from the Magic Land, Idaho Travel Council, Region 4; a letter from the Twin Falls Area Chamber of Commerce; a letter from Gooding County Board of County Commissioners; a letter from Twin Falls County Commissioners; a letter from the Joint School District, Gooding and Twin Falls Counties; a letter from Jerome Chamber of Commerce; a letter from an individual by the name of Robert Hoage; and a letter from the Buell Chamber of Commerce.

Senator McClure. Without objection, those letters will be made a part of the record following your statement.

Mr. Holmes. And Mr. Mott alluded to part of what I am going to say here, so I will make it very brief in regard to the Hagerman Fauna Fossil Beds. It is classified as being 100 percent in poor ecological conditions. The landmark has been listed as damaged for many years in the Secretary of the Interior's Annual Report to Congress.

And one other quote: In fact, smart tourism development encourages the preservation and careful utilization of unique natural historical and cultural environments. Overutilization or abuse of resources can destroy the very foundation of the tourism activity. So said Dr. John D. Hunt, Director and Professor, Travel and Tourism Program at George Washington University, Washington, D.C., presented May 11, 1987, to the Governors Conference in Boise.

I feel this world-reknowned paleontologic site is overdue for tender loving care, and I ask you to treat it kindly by making it the Hagerman Fossil Beds National Monument.

Thank you.

[The prepared statement of Mr. Holmes and the information referred to follow:]

HAGERMAN FOSSILS NATIONAL MONUMENT COUNCIL
P.O. Box 111 Hagerman, Idaho 83332

October 20, 1987

To Whom it may Concern:

The Hagerman Fauna Fossil Beds were discovered in the nineteen twenties and although many fossils were taken out by authorities in the Thirties, few are on display and many have been lost to weather, public poaching, domestic animal grazing, land movement (land slides as well as continuous movement due to the sloping beds) and overland recreational vehicles. The Landmark has been listed as damaged for many years in the Secretary of the Interior's annual report to Congress. It is classified as being 100% in poor ecological condition. I toured the site two weeks ago and can vouch for the fact that much damage has been done. Ask me.

The public is interested and wants to see the beds in a condition conducive to being visited. Tourists travel hundreds of miles off main highways to visit fossil beds in surrounding states--ie, Dinasaur Quarry, Utah, 200 miles from major cities, 100 miles from major highways, had 214,000 visitors in 1986. Petrified Forest National Park, Arizona, 200 miles from major cities but adjacent to a major interstate freeway had 764,857 visitors in 1986. The Hagerman Fossil Sites, when finished would be approximately eight miles from a major freeway--presently 25 miles. The Idaho Travel Bureau reported in 1986 that the average tourist spends 100-115 dollars. With a five percent sales tax just think of the income to Idaho that would occur if the National Parks Study of 1974 were to come true. "The 1990 estimates of visitation indicate a potential of 500,000 visitors at the Hagerman National Monument" and one more quote, "In fact, smart tourism development encourages the preservation and careful utilization of unique natural, historical, and cultural environments. Over utilization or abuse of resources can destroy the very foundation of the tourism activity." So said Dr. John D. Hunt, Director and Professor, Travel and Tourism Program, The George Washington University, Washington, D. C. 20052, presented May 11, 1987, Governor's Conference in Boise.

I feel that this world renowned paleontologic site is overdue for T. L. C. (tender, loving care) and I ask you to treat it kindly by making it the Hagerman Fossil Beds National Monument.

Thank you.

Sincerely,

Holmes

H. L. Burt Holmes, Chairman

A SUBCOMMITTEE OF
HAGERMAN VALLEY CHAMBER OF COMMERCE
PHONE 208-837-4822

JOHN PEAVEY
DISTRICT 22
BLAINE, CAMAS, GOODING
& LINCOLN COUNTIES

HOME ADDRESS
BOX 88
CAREY, IDAHO 83320

MINORITY CAUCUS CHAIRMAN
Idaho State Senate
CAPITOL BUILDING
BOISE

COMMITTEES
AGRICULTURAL AFFAIRS
LOCAL GOVERNMENT & TAXATION
RESOURCES & ENVIRONMENT

Oct 14, 1987

To whom it may concern,

The purpose of this letter is to urge the creation of a National Monument for the Hagerman Fossil Beds. The fossil beds are unique and are being visited by ever larger numbers of people. Unfortunately this traffic is leading to the deterioration of the beds. Closer supervision is needed or they will be destroyed

A National Monument would more than pay for itself with the increased commerce in the Hagerman - Bliss area.

To me one of the great

JOHN PEAVEY
DISTRICT 22
BLAINE, CAMAS, GOODING
& LINCOLN COUNTIES

HOME ADDRESS:
BOX 88
CAREY, IDAHO 83320

COMMITTEES
AGRICULTURAL AFFAIRS
LOCAL GOVERNMENT & TAXATION
RESOURCES & ENVIRONMENT

MINORITY CAUCUS CHAIRMAN
Idaho State Senate
CAPITOL BUILDING
BOISE

unanswered questions of history is what caused the horse to disappear from the North American continent millions of years ago. Horses are very competitive and it would have taken a real change in environment of gigantic proportions to have eliminated them here. Perhaps with the study and development of these beds this and other questions can be answered

Sincerely
John Peavey

RALPH B. PETERS
DISTRICT 25
BLAINE, CAMAS, CASSIA, GOODING,
JEROME, LINCOLN, MINIDOKA
& TWIN FALLS COUNTIES

HOME ADDRESS
601 EAST AVENUE A
JEROME, IDAHO 83338
PHONE: (208) 324-4883

COMMITTEES
COMMERCE, INDUSTRY & TOURISM
LOCAL GOVERNMENT

House of Representatives
State of Idaho

October 13, 1987

Subcommittee on Public Lands, National Parks and Forest
U. S. Senate Office, Room 364
Dirksen Seante Office Building
Washington, D. C. 20518

Gentlemen:

After completing a tour of the Hagerman Fossil Bed with citizens of the local area, Federal Parks Department, B.L.M. and local media, I am convinced that this fossil bed must be placed in a special category.

The fossil bed offers one of the best preserved late Pliocene fossil sites in the world. There are some 300 sites in an area of about 4500 acres. A fossil bed that is known round the world should be something to preserve.

The fact that the area above the fossil bed has gone into irrigated farming in the last thirty years has caused a change in the underground water level. It is causing land slides and other slippage in the whole area as the beds are on very steep ground. How great the damage is so far I cannot say, since I am not an expert in that field, but I will say that it is very noticeable and extensive.

A bill now before the Subcommittee on Public Land is the least that should be done to protect and preserve a site which has only barely been scratched for scientific information. This site is unique in the world. Let us preserve it for the future generations.

Sincerely,

Ralph B. Peters
Ralph B. Peters, Representative

bp

Site of the Famous
Thousand Springs

City of Hagerman
P. O. Box 158
Hagerman, Idaho 83332
Phone 208-837-6636

Home of the World's
Largest Fish Hatcheries

June 10, 1987

Attn:

Re: Hagerman Fossil Beds

Dear

Recently, a lot of attention has been focused on the "World Renowned Hagerman Fossil Beds". This attention has been generated by the fact that they may soon become as extinct as the animals dug up there. These fossil beds have existed for 3½ million years and are the richest fossil site IN THE WORLD for the time period represented here. But we are in danger of losing this valuable natural resource if proper steps are not taken.

While we feel that the Bureau of Land Managements' objective to protect this site from further deterioration is an absolute MUST, we cannot overlook the tremendous potential this area has for tourism and education.

A National Park Service report estimated that 500,000 tourists would stop annually to see the site if it were developed. For a small community like Hagerman, this would mean and unparalleled economic boost. The impact of this tourism would be felt throughout the state as well.

On behalf of the Hagerman Chamber of Commerce, the Hagerman Historical Society, Gooding and Twin Falls Counties and the Hagerman City Council, we want to express our support for the development of this area to it's fullest. We cannot urge Congress strongly enough, to finance any effort to preserve and develop this irreplaceable Historical Landmark.

Sincerely,

Merle E Owsley

Merle E. Owsley
Mayor
City of Hagerman

Magicland

A World Of Fun & Excitement For All Seasons

H. L. Holmes
Hagerman Chamber of Commerce
Hagerman, Idaho 83332

August 24, 1987

Dear Bert:

Please be advised the Magicland Regional Travel Committee of South Central Idaho supports the efforts of the Hagerman Chamber of Commerce to protect, interpret and develop the paleontolgic resource known as The Hagerman Fossil Beds.

We recognize this very important Natural Resource, and applaud the Chambers efforts.

Sincerely,
Nick
Nick James Cozakos
Chairman

NJC:cs
cc: B.L.M. - Boise
Mayor Merle E. Owsley

attachment

P.O. Box 1844, Twin Falls, Idaho 83201

The Greater Twin Falls Area Chamber of Commerce

858 Blue Lakes Blvd. N.
Twin Falls, Idaho 83301
Phone (208) 733-3974

October 1, 1987

Mr. Burt Holmes
Hagerman Chamber of Commerce

Dear Burt:

The Greater Twin Falls Area Chamber of Commerce is wholly in support of the Hagerman Chamber's efforts in designating the Hagerman fossil beds as a national monument.

We fully recognize the importance of this Southern Idaho landmark, not only historically, but as a valuable tourist attraction. No longer can we depend upon agriculture to carry the major burden of the economy. Tourism will be one of the most important factors in economic diversification, and the fossil beds national monument will add tremendously to an already unusual list of scenic and historic Hagerman Valley sites.

We urge the subcommittee on Public Lands, National Parks and Forests to give full consideration to you and all local efforts to achieve national monument designation for this national treasure.

Sincerely,

L.L. Langdon

L.L. Langdon
Executive Vice-President

Affiliated with
U.S. Chamber of Commerce
American Chamber of Commerce Executives
Idaho Association of Commerce & Industry
Idaho Association of Chambers of Commerce
Better Business Bureau of Treasure Valley
Associated Taxpayers of Idaho

GOODING COUNTY
BOARD OF COUNTY COMMISSIONERS
P.O. Box 417
GOODING, IDAHO 83330

Robert P. Thackeray, Chairman, Dist. III 536-6618
Robert E. Tupper, Commissioner, Dist. II 837-4862
Rod Hohnhorst, Commissioner, Dist. I 934-8456
[illegible], Clerk 934-4221
John A. Myers

RESOLUTION

WHEREAS tourism is at this time beneficial to the economic health of Gooding County and,

WHEREAS Gooding County has many interesting and educational geological structures and,

WHEREAS there is a decided need to upgrade access, information and communication abilities regarding these many sites and,

WHEREAS there are several groups endeavoring to increase the organization and public awareness of the benefits inherent in the protection and utilization of these special places for the present generation and those to follow.

IT IS HEREBY THEREFORE RESOLVED that the Gooding County Board of Commissioners do actively and definitely support the efforts and do expect to lend the power of the County in any conscionable manner to enable necessary improvement in these areas to be accomplished.

GOODING COUNTY BOARD OF COMMISSIONERS

Robert P. Thackeray
Robert P. Thackeray, Chairman

Attest: John A. Myers
John A. Myers, Clerk

Robert E. Tupper
Robert E. Tupper, District II

Rod Hohnhorst
Rod Hohnhorst, District I

JUDY FELTON
CHAIRMAN
COUNTY COMMISSIONER
FIRST DISTRICT
BOX 126

MARVIN HEMPLEMAN
COUNTY COMMISSIONER
SECOND DISTRICT
BOX 126

JAMES F. FRALEY
COUNTY COMMISSIONER
THIRD DISTRICT
BOX 126

TWIN FALLS COUNTY

OFFICE PHONE 734-3300
423 SHOSHONE STREET NORTH
TWIN FALLS, IDAHO 83301

BONNIE BRUNING
TREASURER
BOX 88

DORTHY HAMBY
ASSESSOR
BOX 300

RICHARD A. PENCE
CLERK
BOX 126

October 14, 1987

TO WHOM IT MAY CONCERN:

Many individuals and agencies in the Greater Magic Valley are attempting to coordinate a well-planned and carefully organized approach to Tourism. The suggestion that the Hagerman Fossil Beds be designated a National Monument would certainly benefit a much larger geographic area than one city or one County, in addition to providing a unique opportunity to people nation-wide to become informed on a unique area. We encourage any help or guidance you may be able to offer.

Sincerely,

Judy Felton
Judy Felton, Chairman

James F. Fraley
James F. Fraley, Commissioner

Marvin Hempleman
Marvin Hempleman, Commissioner

JOINT SCHOOL DISTRICT 233
GOODING AND TWIN FALLS COUNTIES
Box 236
HAGERMAN, IDAHO 83332

Mrs. Carol Ainsworth
Clerk

Kenneth L. Black
Superintendent

October 16, 1987

The Honorable James McClure
United States Senate
Sub-Committee on Public Lands
National Parks and Forestry
Room 364
Dirksen Office Building
Washington, D.C. 02518

Dear Senator McClure:

In reference to the fossil beds in Hagerman, I feel this is an important area and needs to be preserved and protected. These type of areas should be made available to the public in a way that observation can be made but management and preservation must be of the utmost importance.

Furthermore, I also feel we are locking up too much of our **public** lands to where the average tax-paying American cannot enjoy their use and beauty.

I support preservation and usage of the Hagerman Fossil Beds.

Sincerely,

Kenneth L. Black

Kenneth L. Black
Superintendent

JEROME CHAMBER OF COMMERCE

OFFICE OF THE
EXECUTIVE DIRECTOR
324-2711

220 N. LINCOLN

JEROME, IDAHO
83338

October 15, 1987

H.L. "Burt" Holmes
Hagerman Valley Chamber of Commerce
Box 111
Hagerman, Idaho 83332

Dear Mr. Holmes:

This letter is to inform you that the Jerome Chamber of Commerce, Board of Directors and members all support your efforts regarding the Fossil Beds, the economic factor due to tourism. We feel it is extremely important to preserve them.

Sincerely,

Merlene Maybury

Merlene Maybury
Executive Director

AFFILIATED WITH
U. S. CHAMBER OF COMMERCE
NORTH SIDE COMMUNITIES
IDAHO ASSOCIATION OF COMMERCE AND INDUSTRY

2006 Sherry Lane
Twin Falls, Id. 83301
October 16, 1987

Honorable James A. McClure
United States Senate
401 2nd St. North
Suite 106
Twin Falls, Idaho 83301

Dear Senator:

I have the following comments concerning classification of the Hagerman "Fossil Area":

It is imperative to protect the area because extensive damage is presently occurring.

I recommend that the area be classified as a National Monument to be managed by the BLM. BLM management, offices, etc. are already in place, so costs would be minimized. BLM have personnelto do the job.

All irrigation should be excluded from the area. Pipes, ditches, etc. should be removed.

All ORV use should be discontinued because of the use damage.

Private and State lands should be acquired as needed for protection and management of the area.

Adequate funds should be provided for renovation, protection, development and management of the area for public enjoyment and education.

Thank you for your consideration.

Sincerely,

Robert Hoag
Robert Hoag

BUHL
Chamber of Commerce
104 BROADWAY SOUTH • PHONE 208-543-[illegible]
P. O. BOX 28 • BUHL, IDAHO 83316

TROUT CAPITAL OF AMERICA
Dairying • Beef Cattle
Sheep • Sweet Corn • Feeds
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Farm Equipment Manufacturing

October 16, 1987

To Whom it May Concern:

The Chamber of Commerce of Buhl, Idaho, being located eighteen miles from the Fossil Beds near Hagerman, Idaho, would like to go on record in complete support of the Initiative to declare the Hagerman Fossil Bed area a National Monument.

This area is a valuable Historical and Geological source of information and should be preserved for this Generation and those of the future. If this is not done, much valuable geological information will be destroyed as many Historical areas have been throughout Idaho. We must preserve the past for the progression of the future.

Sincerely,

James E. Ferguson
President

Senator McCLURE. Thank you very much. Mr. Owsley, in prior times there has been local controversy—you made a kind of veiled reference to that in your statement—with some people in the community being opposed to the designation as a national monument.

Mr. OWSLEY. The first time this was proposed they were going to take most of the farmer's land on both sides of the river.

But two of the people that were against that met with me. They did not give me a letter. But they are now for it. Because you are not going to take that much. You know, it used to be a green belt on both sides of the river. You remember that. And they were opposed to that. But not the way it is set up now.

Senator McCLURE. There was some controversy surrounding the discussion some 15 years ago with respect to ORV use. In particular there were a number of motorcycle trails up the bluff.

Mr. OWSLEY. They have already closed that to off-road vehicles.

Senator McCLURE. It has been closed to off-road vehicles, and that is not a matter of issue or discussion anymore. Is that correct?

Mr. OWSLEY. That is correct. They talked to the man that was in charge of that.

Senator McCLURE. Mr. Holmes, you have been around for a while. You have listened to this discussion a while. Do you have any comment about the local acceptance or disagreement with the proposal?

Mr. HOLMES. Yes. The question of the ORV. I was in touch with motorcycle riders over the last week. I hoped to have a letter from them to bring. They were supposed to come by my place over the weekend on their bikes and they did not make it.

But the word I got was that they were in full support of it. I talked to the chief of police of Buell who is involved in the area of the motorcycle riding, and he was for this. So I do not see a problem in that regard. I wish I had the letter, but I do not.

Mr. OWSLEY. Mr. Chairman, I have one more thing if I may.

Senator McCLURE. Yes, sir.

Mr. OWSLEY. Hunting, there is a lot of duck hunting down along the river in that area. How would it affect the hunting of ducks, this bill?

Senator McCLURE. I think it is safe to say that if the boundaries of the monument include the shoreline of the river, that duck hunting would be prohibited in that area. That is the usual pattern. I would expect it to apply here.

Mr. OWSLEY. On both sides?

Senator McCLURE. Well, wherever the boundaries are. If the boundary is only on the southwest bank of the river, that would be the only bank involved.

Mr. OWSLEY. They were thinking of a 50-foot setback or something like that.

Senator McCLURE. That is a possibility.

Mr. OWSLEY. Just 50 feet so they can get up and down with their boats and set up a blind, this kind of thing.

Senator McCLURE. It is, I think, almost totally a function of where the boundary is drawn. And I suppose there would have to be some consideration of access to the area, specifically how indeed it is to be accessed under the plan that must be developed.

Mr. OWSLEY. I will tell them.

Senator McClure. Did you have anything further?

Mr. Holmes. No. I did have a call in regard to that, but it has been spoken of.

Senator McClure. Let me ask you this question. From the standpoint of the community, how important is the duck hunting? I guess I will ask you to march into that bog with me.

Mr. Owsley. There are other places where they can hunt ducks just as well, probably better. Cornfields and this kind of thing.

You know, there are only a couple or three people that ask about that. So I said I would ask you.

Mr. Holmes. There is an area to the north of that all along the river, which has got to be seven or eight, nine miles, where they can also use the river. So it is not completely wiping it out.

Mr. Owsley. It is not really that important.

Senator McClure. Thank you very much, gentlemen.

Mr. Owsley. Thank you.

Mr. Holmes. Thank you.

Senator McClure. I call Mr. Bob Burford, Director of the Bureau of Land Management, to present testimony on H.R. 2629, the Alaska National Interest Lands Conservation Act amendments. Welcome, Mr. Burford.

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JAMES PARKER, ASSISTANT DIRECTOR FOR SUPPORT SERVICES; TED STEPHENSON, THE ALASKA PROGRAM STAFF; AND STEVEN KOPECK, LAND SURVEYOR, OFFICE OF SURVEY

Mr. Burford. How are you?

Senator McClure. I am fine. Thanks. And you?

Mr. Burford. I see you are giving away some of my land, and you did not even invite me up to witness the giveaway.

Senator McClure. Yes, sir. And spoken like a true bureaucrat. It is your land.

Mr. Burford. That is right. I took over several years ago and I have acquired a proprietorship just by reason of nobody running me off yet.

Senator McClure. Well, we are going to run you off of some of it.

Mr. Burford. That is what I understand. You did not see me up here protesting though. Did you?

Senator McClure. No, sir. I did not. And I appreciate that very much.

Mr. Burford, as you know, your entire statement will be placed in the record in full. You are invited to summarize in your own fashion at this point.,

Mr. Burford. I am accompanied by Jim Parker, the Assistant Director of Support Services, Ted Stephenson, of the Alaska Program Staff, and Steven Kopeck, Land Surveyor, Office of Survey.

I do appreciate this opportunity. If there is no objection, I would like to have them join me because there are some technical questions which——

Senator McClure. Come forward and take seats at the table, and if you are called on you will be available with mikes close at hand.

Mr. Burford. As you so kindly noted, my entire statement has been presented to the staff, and I appreciate having the entire statement entered in the record.

I have a summary, which is fairly lengthy because this is a fairly technical bill. We have testified in favor of the bill in the House, and now testify in favor of the bill as passed by the House.

It is an amendment to section 901 of ANILCA to confirm the present policy of the Department that was adopted in 1983, after we negotiated with and agreed with the State of Alaska and the Native Corporations, concerning ownership of and chargeability for the submerged lands of Alaska.

These issues go back as far as 1785. Historically speaking, by the act of May 18, 1796, it became law that title to lands bordering on non-navigable streams extends to the center of the streams.

About 100 years later, in 1891, the Supreme Court ruled that for lands bordering on non-navigable lakes or ponds, the title also extended to the center of the lake or the pond.

The Department has consistently applied these principles to land conveyances in both the lower 48 and Alaska, with the exception of selections made by the State of Alaska under the Alaska Statehood Act, and selections made by Native Corporations under ANCSA, the Alaska Native Claims Settlement Act.

What this means is that in situations other than those involving the State of Alaska or Native Corporations, when the State or other entity was entitled to select a certain amount of land, which included land covered by non-navigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated.

We have a longstanding policy, which is reflected in the Bureau of Land Management's Manual of Surveying Instructions, which provides policy guidance on how to meander rivers and lakes and how to calculate the acreage of fractional sections.

The manual also provides that navigable bodies of water, as well as all lakes, equal to or larger than 50 acres, and streams and rivers equal to or wider than three chains—which is a survey term not much in use anymore, but three chains does equal 198 feet—are to be excluded from upland acreage calculations.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select a little more than 103 million acres of vacant, unappropriated, unreserved public land. It also provided that the state automatically receive title to submerged land beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other laws.

The key to understanding Interior's original position is that section 6(g) of the Alaska Statehood Act provided that, where land selected by the state was unsurveyed, the Secretary of the Interior was to survey only the exterior boundaries of the selected area and issue a patent for the area in terms of that survey.

In accordance with this instruction, BLM surveyed only the perimeter of the State selections and did not meander the submerged lands within the selected areas. That is, when the State made selections of land containing non-navigable bodies of water, BLM charged the submerged land acreage against the State's entitlement.

This was in apparent contradiction to the Department's longstanding policy. Native Corporations were entitled, under ANCSA, to select 44 million acres of public lands. In the same context, the Department interpreted the term public lands to include submerged lands beneath non-navigable waters.

Again, BLM charged the submerged lands against the Corporations' entitlement. As a result, the navigability and non-navigability of water bodies, and the chargeability of submerged lands, became an issue of serious contention between the Federal Government, the State of Alaska, and the Native Corporations.

In particular, the State has contended that some of the submerged lands that have been conveyed to the Native Corporations should have been recognized as belonging to the State.

The Native Corporations have contended just the reverse and have found it necessary to challenge the initial navigability decisions to ensure that they will not be deprived of any portion of their entitlements.

Both the State and Native Corporations contended that the Survey Manual should have been followed when the lands were conveyed. The Native Corporations have also asserted that they should not be charged for submerged lands involved in their selections.

As I said, in an attempt to resolve these issues, the involved parties negotiated a change in policy concerning the chargeability of submerged lands in Alaska.

That policy was published in the Federal Register in December 1983 and was subsequently reiterated in a March 1984 memorandum of understanding between the State of Alaska and the Department of the Interior, and in a final rulemaking amending the provisions of the Alaska Native selection regulations that was published in the Federal Register in April 1985.

We have copies of all those documents, and if the Committee staff does not have those copies, we would be glad to furnish them for the record. The basic provisions of that policy are confirmed in H.R. 2629.

Briefly stated, they are that submerged lands beneath all water bodies in Alaska are to be meandered in accordance with the principles in the Manual of Surveying Instructions, in the same way it is done for other States, and that, when feasible, photogrammetry is to be used in surveying meander lines, and planimetry is to be used for acreage computations of the upland lots.

Alaska Native Corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered in accordance with the new policy.

That beds of tidal waters, which were reserved to the United States at the time of statehood, and are less than 50 acres in size or three chains in width, will not be meandered, and will be charged against Native and State entitlements.

Implementation of this policy has had these benefits. The Native Corporations and the State are not receiving less land than Congress specified since there is no charge for submerged lands that are meandered.

Treatment of landowners in Alaska is consistent and equitable with the treatment of landowners in the Lower 48 States. Since the State, the Native Corporations, and the Department of the Interior have concurred in the new policy, a major source of friction has been removed.

Although the Department's current policy concerning the chargeability of submerged lands has eliminated many of the concerns associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved.

At issue are BLM's initial navigability decisions and their effect on hundreds of conveyances made to Native Corporations and the State. Section 901(a), as originally enacted, established a five-year statute of limitations which began to run on December 2, 1985.

Enactment of Public Law 99-644 extended the statute to eight years, and also extended the seven-year time limit to nine years. Thus the State must either challenge all of the conveyances that are subject to the eight-year statute of limitations, or risk the possibility of being precluded from challenging some of the conveyances and decisions.

H.R. 2629 does not contain any time limitations, and thus would repeal these two provisions. We feel that this is proper.

As I said earlier, we favor enactment of H.R. 2629 because it confirms in law current policy, which we feel is equitable to the State and to the Native Corporations with regard to submerged lands in Alaska.

Section 201 of H.R. 2629 would also add a new subsection to section 1302(h) of ANILCA to express the necessity for Congressional approval of any conveyance of lands within the Coastal Plain of the Arctic National Wildlife Refuge other than lands validly selected before July 28, 1987.

We have repeatedly stated that we will not allow any exchanges in the Coastal Plain without Congressional approval, and we have no objection to this provision. However, I would point out a technical problem with the amendment as it is currently written.

ANILCA permitted the Secretary to exchange all lands the Kaktovik Inupiat Corporation received outside ANWR for lands to be selected inside ANWR adjacent to lands already conveyed to it.

We arranged that exchange, and before July 28, 1987, KIC selected everything to which it believed it was entitled. The present provision in section 201 that protects valid selections made before July 28, 1987, would seem to have protected KIC's right to have the United States convey to it the remainder of its land entitlement.

However, more land has been lost to KIC through adjustments in surveys, State claims, or allotments. Therefore, there might not be enough selections of record to meet KIC's land entitlement. Thus, section 201 of the bill might be considered to create an additional barrier to conveyance to KIC.

This concludes my summarization, which is not much shorter than my total statement. But we will take questions.

[The prepared statement of Mr. Burford follows:]

OCT 20 1987

STATEMENT OF ROBERT F. BURFORD, DIRECTOR, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, COMMITTEE ON ENERGY AND NATURAL RESOURCES, UNITED STATES SENATE, ON H.R. 2629, AN ACT "TO AMEND THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT OF 1980 TO CLARIFY THE CONVEYANCE AND OWNERSHIP OF SUBMERGED LANDS BY ALASKA NATIVES, NATIVE CORPORATIONS, AND THE STATE OF ALASKA."

I appreciate the opportunity to appear before the Subcommittee today to discuss the Department of the Interior's position on the House-passed version of H.R. 2629.

We favor enactment of H.R. 2629.

Section 101 of H.R. 2629 would strike out the text of section 901 of the Alaska National Interest Lands Conservation Act of 1980, generally referred to as ANILCA, and insert new language in its place. In rewriting section 901, H.R. 2629 would eliminate the provisions relating to the statute of limitations for the filing of civil actions concerning 1) the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to either ANILCA or the Alaska Native Claims Settlement Act of 1971 (ANCSA), or 2) a decision by the Secretary of tne Interior that the water covering such parcel is not navigable.

Section 901(a)(1) as rewritten in H.R. 2629 would establish the requirements for, and the procedures to be used in, "meandering" lakes, rivers and streams, whenever the Secretary surveys lands selected by an Alaskan Native, a Native Corporation, or the State, pursuant to ANCSA, the Alaska Statehood Act, or ANILCA.

Under Section 901(a)(2) meandering would not be required for lakes less than 50 acres and streams less than 3 chains in width if title to the lands beneath navigable waters did not vest in the State pursuant to the Submerged Lands Act.

Section 901(a)(3) would provide that the Secretary not be required to determine navigability of a lake, river, or stream large enough to be meandered, and that he not be required to compute the acreage of such land or describe such land in a conveyance document.

Section 901(a)(4) would provide that nothing in the section shall be construed to require ground surveys or monumentation of meander lines.

Section 901(b)(1) would provide that whenever the Secretary, pursuant to ANCSA, ANILCA, or the Alaska Statehood Act, conveys to an Alaska Native, a Native Corporation, or the State, land which abuts or surrounds a meanderable lake, river or stream, all right, title and interest of the United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. This paragraph also provides that the right, title and interest vested in such Native or Native Corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

Section 901(b)(2) would incorporate into section 901 the provisions of the March 28, 1984, Memorandum of Agreement between the Department of the Interior and the State of Alaska and would ratify it as to the duties and obligations of the United States, as a matter of Federal law.

Section 901(c)(1) would provide that execution of an interim conveyance or patent by BLM for land selected by a Native or a Native Corporation which includes, surrounds or abuts a lake, river, or stream, or any portion thereof, would be the final agency action with respect to navigability, unless such decision was validly appealed on or before December 2, 1980.

Section 901(c)(2) would provide that no agency other than the BLM would have authority to determine navigability of lakes, rivers, or streams within an area selected by a Native or Native Corporation, unless such determination was validly appealed on or before December 2, 1980.

Section 901(c)(3) would provide for awarding attorney's fees and costs against the plaintiff in favor of a successful Native Corporation when, pursuant to ANCSA or ANILCA, as amended by H.R. 2629, conveyances of lands which underlie a lake, river, or stream are challenged in a court of competent jurisdiction.

Section 901(d) retains the current definitions of 'navigable' and 'navigability'.

Section 102 of H.R. 2629 would provide that nothing in H.R. 2629 shall amend or alter any land exchange agreement to which the United States is a party, or any statute that authorizes, ratifies or implements such an agreement.

Section 201 would add a new subsection (2) to section 1302(h) of ANILCA which would prohibit the Secretary of the Interior from conveying, by exchange or other means, any lands or interests in lands within the coastal plain of the Arctic National Wildlife Refuge (ANWR), other than land validly selected prior to July 28, 1987, without prior approval of Congress.

Section 301 would include approximately 325,000 acres of land described in Public Land Order 6607 of July 8, 1985, as part of the Arctic National Wildlife Refuge. The lands would be administered in accordance with the provisions of sections 303(2) and 304 of ANILCA and other applicable statutes.

H.R. 2629 would make section 901 of ANILCA conform to the policy adopted by the Department of the Interior and agreed to by the State of Alaska and Native Corporations, concerning the ownership of, and chargeability for, submerged lands.

To add perspective to H.R. 2629, I will briefly sketch out the historical background of the Department of the Interior's current policy on submerged lands.

Since the passage of the Act of May 18, 1796, it has been the law that the title to lands bordering on nonnavigable streams extends to the center of the streams. Further, in 1891, in the case of Hardin v. Jordan, 140 U.S. 371, the Supreme Court decided that the title of grantees of lands bordering on nonnavigable lakes or ponds extends to the center of the lake or pond. The

Department has applied these principles consistently to land conveyances in both the lower 48 states and Alaska, except as to selections by the State of Alaska under the Alaska Statehood Act and to selections by Native Corporations under the Alaska Native Claims Settlement Act.

Thus, when a State or other entity, other than the State of Alaska or a Native Corporation, was entitled to select a certain amount of land which included land covered by nonnavigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated. This longstanding policy is reflected in the Bureau of Land Management's (BLM) Manual of Surveying Instructions (Manual), which includes instructions for meandering rivers and lakes and calculating the acreage of fractional sections. The Manual provides that navigable bodies of water, as well as all lakes equal to or larger than 50 acres, and streams and rivers equal to or wider than 3 chains (198 feet), are to be excluded from the public lands.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select 103.35 million acres of vacant, unappropriated, unreserved public land. That Act also provided that the State took title to submerged lands beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other law. However, section 6(g) of the Alaska Statehood Act provides that where lands selected by the State are unsurveyed, the Secretary of the Interior is to survey the exterior boundaries of the selected area and issue a patent for such selected area in terms of the exterior boundary survey. In accordance with this instruction, BLM surveyed only the perimeter of the State's selections and did not meander the submerged lands within the selected areas.

Under ANCSA, Native Corporations were entitled to select 44 million acres of public lands. In this context, the Department interpreted the term "public lands" to include submerged lands beneath nonnavigable waters.

A final determination as to the navigability of a body of water can only be made by a court, and such judicial determinations have never been issued on the overwhelming majority of lakes and rivers in Alaska. Thus, BLM, in its efforts to convey the lands that have been selected by the State and the Native Corporations, has been required to make initial determinations as to the navigability of hundreds of lakes and rivers.

If BLM found that a body of water within a Native selection was navigable, the land underlying the waterbody was held to belong to the State and was not charged against the Native Corporation's entitlement. If the waterbody was found to be nonnavigable, the selected lands were conveyed to the Native Corporation and charged against its entitlement - an apparent contradiction of the Department's longstanding policy in the lower 48 states. Similarly, when the State made selections of lands containing nonnavigable bodies of water, BLM charged the submerged lands against the State's entitlement.

As a result, the navigability and nonnavigability of water bodies, and the chargeability of submerged land have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In particular, the State believes that many of the submerged lands that have been conveyed to the Native Corporations should have been recognized as belonging to the State. Native Corporations have found it necessary to challenge the initial navigability decisions to insure that they will not be deprived of any portion of their entitlements.

Further, the State and the Native Corporations have long contended that the Manual should be followed when lands in Alaska are conveyed. The Native Corporations have also asserted that they should not be charged for federally-owned submerged lands which they have selected.

In an attempt to resolve submerged land inequities, the involved parties negotiated a change in policy concerning the chargeability of submerged lands. That policy was published in the Federal Register of December 5, 1983, and was subsequently reiterated in a March 28, 1984, Memorandum of Understanding between the State of Alaska and the Department of the Interior, and in a final rulemaking amending the provisions of the Alaska Native Selection regulations (43 CFR 2650) that was published in the Federal Register on April 19, 1985.

The basic provisions of that policy are:

- Submerged lands beneath all water bodies shall be meandered in accordance with the principles in the Bureau of Land Management's Manual of Surveying Instructions. Whenever feasible, photogrammetry is to be used in surveying meander lines and planimetry is to be used for acreage computations of the upland lots on plats of survey.

- Alaska Native Corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered in accordance with the new policy (i.e., in accordance with the Manual or subsequent regulations);

- Those beds of tidal waters which were reserved to the United States at the time of statehood and are less than 50 acres in size or 3 chains in width will not be meandered and will be charged against Native and State entitlements.

Implementation of this policy is having the following benefits:

- The Native Corporations and the State are not receiving less land than Congress specified, since there is no charge for submerged lands that are meandered.

- Treatment of landowners in Alaska is consistent with the treatment of landowners in the lower 48 states.

- There is less likelihood that protracted litigation will occur, thus reducing delays in issuing conveyances.

- Since the State, the Native Corporations, and the Department of the Interior have concurred in the new policy, a major source of friction has been removed.

Some problems concerning navigability decisions were addressed by the Congress in section 901 of ANILCA, which established time frames and procedures for challenging such decisions. Specifically, section 901(a) provided that the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to either ANILCA or ANCSA, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within 5 years after the date of the execution of the involved conveyance, if the conveyance was executed after December 2, 1980, the date of enactment of ANILCA. A 7-year statute of limitations applied if the conveyance or patent was executed before the date of enactment of ANILCA.

Although the Department's current policy concerning the chargeability of submerged lands has eliminated many of the problems associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved. At issue are BLM's navigability decisions, and their effect on hundreds of conveyances made to Native corporations and the State.

The 5-year statute of limitations established by section 901(a), as originally enacted, began to run on December 2, 1985. Enactment of P.L. 99-644 extended the statute to 8 years and also extended the 7-year time limit to 9 years. Thus, the State must either challenge all the conveyances that are subject to the 8-year statute of limitations, or risk the possibility of being precluded from challenging some of the conveyances and decisions. H.R. 2629 does not contain any time limitations.

As I said earlier, we favor enactment of H.R. 2629 because it enacts into law the current policy of the Administration with regard to submerged lands in Alaska and may eliminate the possibility of much litigation.

Section 201 of H.R. 2629 would add a new subsection to section 1302(h) of ANILCA to express the necessity for Congressional approval of any conveyance of lands within the coastal plain of the Arctic National Wildlife Refuge (ANWR) other than lands validly selected before July 28, 1987. We have repeatedly stated that we will not allow any exchanges in the coastal plain without Congressional approval and we have no objection to this provision. However, we point out a technical problem with the amendment as currently written. ANILCA permitted the Secretary to exchange all the lands the Kaktovik Inupiat Corporation (KIC) received outside ANWR for lands to be selected inside ANWR adjacent to lands already conveyed to it. We arranged that exchange and, before July 28, 1987, KIC selected everything to which it believed it was entitled. The present provision in section 201 that protects valid selections made before July 28, 1987, would seem to have protected KIC's right to have the United States convey to it the remainder of its land entitlement. However, more land has been lost to KIC through adjustments in surveys, State claims or allotments. Therefore, there might not be enough selections of record to meet KIC's land entitlement. Thus, section 201 of the bill might be considered to create an additional barrier to conveyance to KIC.

This concludes my prepared statement. I will be pleased to answer questions.

Senator McClure. I have one question, and it is on that last subject you mentioned.

You raise a question with respect to section 201. You do not suggest an answer. If there is a problem with the KIC selections, how should the bill be changed to correct that so that indeed there is not an additional barrier to selection?

Mr. Burford. I think it would help if in this hearing we clarified that that position was not to apply to those lands, to the difference in the lands between what KIC originally was to receive, and what they have come up short.

The legislative history would then show that the intent was not to preclude KIC from its original entitlement under the law, as first proposed.

Senator McClure. So that the changes proposed in this would not affect the acreages in the exchange? Is that correct?

Mr. Burford. That would be my hope, Senator. And I think that if the Senator from Alaska concurred, perhaps that would show in the testimony.

I do not think that there was any intent on the part of the sponsors of the bill in the House to preclude, but as is the case in Alaska, survey is somewhat behind occasionally, and they were precluded from their real entitlement.

Senator McClure. I am not aware of any expressed opposition to the KIC exchange. And it would seem to be a simple matter to simply recognize that a change has taken place, and the changes expressed here do not change that exchange term.

Mr. Burford. That would be——

Senator McClure. That is what I understand you to be suggesting.

Mr. Burford. Yes, sir.

Senator McClure. Thank you very much, Mr. Burford. I have no further questions. I will yield both the time and the gavel to the distinguished senior Senator from Alaska, Senator Murkowski.

Senator Murkowski [presiding]. Thank you very much. I appreciate, Senator McClure, your asking the question that I too had been prepared to propose to Mr. Burford. I wish you a good afternoon, Senator.

So that there is no misunderstanding on that, whatever housekeeping is necessary on the Kaktovik is still achievable. But it is quite clear that this legislation as it currently stands would prohibit any other exchanges beyond that without Congressional approval.

Mr. Burford. Well, Senator, as you know, the Secretary has agreed that those other exchanges that they would be sent before the Congress.

We do not read the bill as requiring, we do not read the Alaska Statehood Act as requiring that. But in order to promote amity and friendship with Congress and the committees thereof, the Secretary has proposed that they be sent to Congress and receive Congressional approval.

We recognize that this is an important consideration for Congress, and think that they should have input.

[Subsequent to the hearing Mr. Burford submitted the following:]

[illegible]

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

IN REPLY REFER TO
1750(140)

NOV 12 1987

Honorable Dale Bumpers
Chairman, Subcommittee on Public Lands,
National Parks and Forests
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510-6510

Dear Mr. Chairman:

This is in response to your letter of October 23, 1987, requesting additional information concerning the testimony that I presented before your Subcommittee on October 20, 1987, on H.R. 2629, a bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the conveyance of ownership of submerged lands by Alaskan Natives, Native Corporations and the State of Alaska.

Your questions and our answers follow:

1. Question

   Has the BLM manual of survey instructions been applied to the Indian reservations?

   Answer

   Yes. The Manual of Surveying Instructions has been used to describe how cadastral surveys of the public lands, including Indian Reservations, are to be executed in conformance with statutory law and its judicial interpretation.

   Question

   If so, are the large waterbodies (lakes 50 acres or larger, rivers 198 feet or wider) excluded from the survey?

Answer

Yes. Paragraph 3-115 of the 1973 Manual of Surveying Instructions states "The traverse of the margin of a permanent natural body of water is termed a meander line. All navigable bodies of water and other important rivers and lakes are segregated from the public lands at mean-high water elevation. In original surveys, meander lines are run for the purpose of ascertaining the quantity of land remaining after segregation of the water area." For the most part the larger waterbodies are excluded from the survey by the meandering process. The minimum technical standards for meandering nonnavigable waterbodies have evolved over the years to 50 acres for lakes as stated in paragraph 3-121 of the 1973 Manual, and 3 chains for rivers as stated in paragraph 3-120 the Manual. The meandering process is the means by which water acreage is segregated from the upland areas.

Question

If so, does the exclusion result in a net increase in the size of the reservation?

Answer

No. Generally speaking Indian treaties in the lower 48 states defined the limits of the reservations by either metes and bounds or the Public Land Survey System. These boundaries permanently fixed the outer limits and sizes of the reservations and approximate acreages were given in some cases. During the course of the establishment of the Public Land Survey System within reservations, meanders were surveyed and water acreages segregated to accurately define the useable upland acreages within allotments and tribal lands. The reservation boundaries were not subsequently altered since acreages were not the governing factors in the treaties.

Question

Who owns the submerged land of the large waterbodies that have been excluded?

Answer

It is not possible to give a general answer to this question because ownership is determined by many different factors. These might include, among others, specific language in the reservation, whether or not the reservation was created before or after Statehood, whether it was done by Executive Order or legislative withdrawal, and what valid existing rights existed prior to Statehood. The mere fact that a body of water has been meandered by the 50 acre or 3 chains standard does not purport any ownership. Surveying the body of water does not determine navigability and does not determine ownership. Meanders are only a means of determining upland acreage, both in Alaska and the lower 48 states.

2. Question

Please provide suggested statutory or report language to deal with the technical problems you have identified relative to Title II of H.R. 2629.

Answer

We suggest that Title II of H.R. 2629, on page 5, lines 17 through 22, be amended to read as follows:

> "(2) Nothing in this Act or any other provision of law shall be construed as authorizing the Secretary to convey, by any exchange executed after July 28, 1987, lands or interests in lands within the coastal plain of the Arctic National Wildlife Refuge without prior approval by Act of Congress."

In addition, we suggest that the following language appear in the discussion of Title II in the Committee Report:

> "This Title is not intended to preclude the conveyance of valid Alaska Native Allotments within the coastal plain of the Arctic National Wildlife Refuge (ANWR) to qualified applicants, or to preclude the conveyance of lands within ANWR to the Village Corporation for the Village of Kaktovik, or to preclude the conveyance of the subsurface estate of lands conveyed to the Village Corporation for the Village of Kaktovik to the Arctic Slope Regional Corporation. It is intended to cover only exchanges of lands within ANWR for lands outside that area that are executed after July 28, 1987."

I trust this information is helpful.

Sincerely,

Robert F. Burford

Director

Senator MURKOWSKI. All right. I think we are ready to go to our next witness on panel four, and that is Mr. John Katz. Gentlemen, I thank you.

Mr. Katz is accompanied by Gary Gustafson, Chief of the Land Management Section, Division of Land and Water Management, Alaska Department of Natural Resources of Anchorage, Alaska. Mr. Katz is Director of State-Federal Relations and Special Counsel to the Governor of the State of Alaska.

And gentlemen, as you prepare yourself, I am going to take the opportunity to briefly refer to my opening statement, which I would ask be entered in the record.

I do want to indicate for the record that this marks the third time the subcommittee has held a hearing on the Alaska Submerged Lands legislation in the last 19 months. I do not know that that is necessarily any record. But I think it is indicative of the fact that the Committee has addressed this matter before.

And I personally had the privilege of chairing all three. Either the privilege or duplicative posture. I had hoped the issue would be resolved some time ago. But it is not.

But we nevertheless perservere. The need for the legislation arises out of three statutes and out of an unfair practice by the Federal government in implementing laws. Under the Alaska Native Claims Settlement Act, Native Corporations are entitled to 44 million acres of land in the state of 104 million acres.

In addition, by virtue of the Submerged Lands Act, the state is automatically entitled to submerged lands beneath all navigable waters in Alaska.

Further, whether a certain water body is navigable is ultimately determined by the courts through litigation that is a costly, slow, and complicated process. And this creates great uncertainty for the state over submerged lands ownership.

The Bureau of Land Management has adopted a Survey Manual, and the manual sets the guidelines of what water bodies would most likely be considered navigable by the courts.

I am going to omit that reference. However, I think it fair to point out for the record that this is a system that has been applied and the formula applied in every state except Alaska.

So as a consequence, there is reason to understand why we are a little outspoken on this. Before 1983 a different standard was applied in Alaska and the BLM conveyed submerged lands beneath all water bodies, including those greater in size than the Survey Manual standards.

These lands were also charged against the acreage entitlements of the state Natives. The results for the Natives, if the court determines that submerged lands already conveyed to a Native Corporation lie beneath navigable waters, are that the Corporation loses the acreage.

And for the state, the submerged lands for which the state is automatically entitled under the Submerged Lands Act have been charged against the statehood entitlement and lands which rightfully belong to the state have been conveyed to the Natives.

In the Alaska Lands Act the Congress attempted to resolve this dispute by enacting a statute of limitations which gave the state five years to challenge the Native Corporation's ownership of submerged lands in court.

The statute of limitations has been extended twice—first for 1 year, and then for two. We are now in the first year of a 2-year extension.

The statute of limitations is certainly no solution, which I am sure the witnesses will point out. It puts the Federal government in the position of forcing upon the Natives and the State of Alaska needless costly litigation.

It is my understanding that there would have been as many as 150 lawsuits out of necessity that would be filed by the state. It is an absurd policy, given that a simple and equitable solution exists.

And certainly the bill before us today is that solution. It provides for that; it repeals the statute of limitations. It guarantees the applicability of the Survey Manual to Alaska, and memorializes an agreement between the BLM and the state on how to rework past conveyances.

The bill was devised through discussions between the Department of the Interior, the Native Corporations, and the State of Alaska. It has been passed by the House and now again awaits action in this Committee.

I think we have covered the point of the provision requiring any land exchanges in the Arctic National Wildlife Refuge to receive Congressional approval. I think that that assurance has been given time and time again to this body by the Secretary of the Interior and others.

So I do not see the necessity of such a provision in the language. But it is here. And I guess we better get on with it. So I will not delay the witnesses any longer, other than to say, gentlemen, it is a pleasure to have you here, and I look forward to your testimony. Please proceed.

STATEMENT OF JOHN W. KATZ, DIRECTOR OF STATE-FEDERAL RELATIONS AND SPECIAL COUNSEL TO STEVE COWPER, GOVERNOR, STATE OF ALASKA

Mr. **Katz**. Thank you, Mr. Chairman. The State of Alaska strongly supports the enactment of H.R. 2629.

As your statement pointed out, it is the product of literally years of discussion between the State of Alaska, the Interior Department, and the Alaska Federation of Natives.

The legislation reflects our best judgment on how to resolve an extremely difficult series of problems in Alaska. In our judgment it is no accident that this legislation passed by unanimous consent in the House of Representatives.

The legislation is divided into two principal parts. The first part would legislatively validate the decision by the Secretary of the Interior in 1983 to apply the BLM Survey Manual to state and Native conveyances in Alaska.

Opponents of the legislation have sought to portray that decision as an isolated decision of then-Secretary of the Interior Jim Watt.

In fact, it is not an isolated decision. The former Assistant Secretary for land and water resources in the Carter Administration, after an extensive analysis, made a similar recommendation.

In fact, the application of the BLM Survey Manual reflects over 100 years of BLM practice and procedure, with respect to public land entries in Alaska and in the lower 48 states.

We have been able to identify no substantiation or documentation for the original decision of the Interior Department not to apply the BLM Survey Manual to state and Native conveyances.

The first component of this legislation would simply bring equity to what would otherwise be an inequitable situation, and it would bring this treatment of state and Native conveyances into line with the treatment of other public land entries in Alaska, and with public land entries in the treatment of other states in the lower 48 states.

We think that that legal and equitable consideration in and of itself should be enough to militate in favor of passage of H.R. 2629. But in fact I think it is worth noting the acreage implications very briefly.

The state and the Bureau of Land Management estimate that the acreage implications would be somewhere between 783,000 and 1.8 million acres. This is a subject that Mr. Gustafson will elaborate on in a little greater detail.

The difference between those figures is not the product of differences or disagreements about methodology or study results. What it reflects is a different view of the concept of navigability for title purposes.

There is a very close relationship between the operation of the BLM Survey Manual and the concept of navigability for title. The more lands that are determined to be navigable for title purposes, the less acreage would be affected by the BLM Survey Manual.

So far the state has been relatively successful in vindicating its rather expansive view of the navigability criteria in Alaska. And as a consequence, we think that the acreage figures will be at the very low end of the spectrum. In fact they may even be lower than the 783,000 acres that I referred to before.

Most of the state's acreage is not in conservation system units, and therefore we perceive relatively few impacts in terms of the state. While there is more extensive Native acreage within conservation system units, most of that acreage is localized in the Calista and Bristol Bay regions.

Both of those regions have extensive water bodies, and we think, generally speaking, that acreage is suitable for wildlife habitat and not much else. So we do not see much of an implication from that point of view.

It was the intention of the BLM Survey Manual, as it applied to stock grazing, homesteads, and other public land entries in the lower 48 states, to assure that the recipients of public land from the United States would basically receive usable and dry acreage. And in the context in Alaska, the same is true.

We think it is inaccurate to say that either the state or the Natives would receive a windfall if this legislation passes. In fact, all they will receive is their full entitlement guaranteed by Congress in the Statehood Act and in the Native Claims Settlement Act.

The second portion of this legislation would repeal the statute of limitations contained in Section 901(a) of ANILCA. While it is true that the state originally supported that statute of limitations, further legal research and experience has shown that that original support was in error.

And we believe that it is a perfectly permissible function of public law to be modified in situations where initial assumptions have proved invalid.

On the basis of our legal research, we were compelled to initiate litigation in Alaska challenging the statute of limitations on the basis of the equal footing doctrine. We have suspended the progress of that litigation, pending the hoped-for legislative result.

I think it is important to note that at this point in time to our knowledge there is no existing statute of limitations governing a state's capacity to bring navigability for title challenges, except the one contained in 901(a) of ANILCA.

And the reason is that last year the Congress modified the Federal Title Act to resolve this problem as it applied to other states in the United States.

Equally important, we think that there are compelling policy reasons for repealing Section 901. As presently constituted, it impels the state to bring navigability challenges, simply for the purpose of protecting its rights against the statute of limitations.

As you pointed out, Mr. Chairman, at the time of one of the extensions, we were contemplating literally 150 lawsuits that were motivated purely and exclusively by the necessity of complying with the statute of limitations. There were no other policy reasons involved.

There has been some speculation about whether the state would really initiate extensive litigation if the statute is not repealed. We will. We have to in support and compliance with our own concept of the stewardship of the public domain.

We have noticed three negative implications under the existing statute of limitations. First, it has led to extensive and needless conflict between the Federal government, the state, and Native Corporations.

Second, it has raised the potential of a flood of litigation in courts, which are already inundated with the pending lawsuits.

Third, it imposes tremendous monetary and administrative burdens on the state and on Native Corporations, none of which at this point in time can afford those implications.

The original intention of the statute of limitations was to bring certainty to the public land title process in Alaska. In fact, it has had the exact opposite result. The threat or the reality of lawsuits initiated under the statute of limitations will and has brought uncertainty.

We think that a much better prototype for resolving this problem is to repeal the statute of limitations, and let navigability challenges occur as they have in the lower 48 states only when important natural resource considerations and conflicts are involved. For example, the possible existence of oil and gas.

Those challenges tend to be very infrequent, and only when real interests are involved. I think one brief illustration will serve to focus on the points I have been making here.

Confronted with the imminency of the statute of limitations, the State of Alaska was compelled to bring a navigability lawsuit on the Tazimina River for the sole purpose of complying with the statute of limitations.

To satisfy other doctrines of navigability, we ended up suing three village corporations, one regional corporation, and the Federal government.

The amount of conflict and misunderstanding took many months to resolve, even though the state was able eventually to dismiss the lawsuit when the statute of limitations was extended.

We understand that some of the opponents of this legislation have just recently proposed a bill of their own. We believe that that legislation is too little and too late. It addresses, or seeks to address, only one portion of the problem, that is the statute of limitations, and does not address at all the other portion of the problem, that is the BLM Survey Manual.

We believe that the legislation pending before you accomplishes two important Federal purposes. One is that it does bring certainty to the public land title process in Alaska.

And secondly, it assures the Native Corporations and the state of receiving their full entitlements under the Statehood Act and the Alaska Native Claims Settlement Act respectively.

Before concluding, I do want to indicate the state's support for language included by the House, which would require legislative approval of ANWR land exchanges. We believe that Congressional approval is already mandated by the regime established in Section 1002 of ANILCA.

Beyond this it is important to note that the Secretary of the Interior has already mentioned as a matter of policy that he supports Congressional approval of ANWR land trades.

And finally, we think that it is very important that the people's elected representatives in the Congress have an opportunity to review and speak on a natural resources issue as important as the proposed ANWR land trades.

Thank you, Mr. Chairman. I would like to turn the microphone over very briefly to Mr. Gustafson of the Department of Natural Resources.

[The prepared statement of Mr. Katz follows:]

TESTIMONY OF JOHN W. KATZ,
BEFORE THE SENATE SUBCOMMITTEE ON
PUBLIC LANDS, NATIONAL PARKS AND FORESTS

October 20, 1987

Mr. Chairman and Members of the Subcommittee:

My name is John W. Katz. I am Director of State/Federal Relations and Special Counsel to Governor Steve Cowper of Alaska. With me today is Gary Gustafson of the Alaska Department of Natural Resources. I will briefly summarize the legal and policy underpinnings of the State's position. Mr. Gustafson will then describe the likely impacts resulting from enactment of certain provisions of the legislation pending before you.

The issue here centers on State ownership of lands underlying navigable waters in Alaska, and the standards by which submerged lands are excluded from State and ANCSA land conveyances for purposes of acreage chargeability. In accordance with the Submerged Lands Act, the Alaska Statehood Act, and constitutional principles of equal footing, ownership of the beds of navigable rivers and lakes in Alaska automatically vested in the State on the date of statehood. However, under Section 901(a) of the Alaska National Interest Lands Conservation Act (ANILCA), the State has only a limited period of time in which to contest Federal navigability decisions concerning title to lands underlying rivers and lakes that have been transferred by interim conveyance or patent to Alaska Natives or Native corporations by the Federal government.

Because of disputes over the proper criteria for determining navigability, and over the procedures to use in surveying and conveying public lands in Alaska, the Department of the Interior (DOI) has conveyed hundreds of riverbeds and lakebeds claimed by the State to Native corporations, and has charged the submerged lands against their acreage entitlements under the Alaska Native Claims Settlement Act (ANCSA). The same situation with regard to chargeability of acreage exists for conveyances to the State under the Alaska Statehood Act. This practice and the limitations period in Section 901(a) raise the potential for extensive litigation to quiet title to submerged lands that have been conveyed to Native corporations.

The State of Alaska strongly supports the enactment of H.R. 2629 for two principal reasons. First, it would permanently repeal the statute of limitations provided in Section 901(a) of ANILCA. As a consequence, much expensive and unnecessary litigation would be avoided, and the pattern of navigability lawsuits in Alaska would approximate that of the Lower 48 states.

Second, H.R.2629 would give legislative sanction to the 1983 decision of the Secretary of the Interior to apply the Manual of Instructions for the Survey of Public Lands of the United States (1973) to State and Native conveyances in Alaska. This legislative confirmation would alleviate much of the problem concerning submerged lands and acreage chargeability, and would ensure equality of treatment between such conveyances in Alaska and the transfer of public lands in other states. H.R.2629 reflects a consensus among the State, the Alaska Native community, and the Department of the Interior as to the best resolution of the issue. The proposed legislation is conceptually similar to Section 918 of H.R.39, as it passed the U.S. House in 1979. That provision was replaced in the Senate in favor of Section 901.

Section 901 of ANILCA

Section 901 of ANILCA was an attempt to guarantee that Native corporations would not lose a portion of their land entitlement under ANCSA as a result of judicial findings of navigability. This was done by establishing a time period after which the State of Alaska could no longer challenge Federal navigability decisions regarding rivers and lakes where the underlying lands had been conveyed to Natives or Native corporations.

Because of the time limitation in Section 901 (which has now been extended twice by Congress), the State must begin to file lawsuits after December 2, 1988, to assert its claims to navigable waterbodies that have been conveyed to Native corporations, or forever lose the right to claim title. Before the second extension was enacted in 1986, the State was evaluating approximately 150 waterbodies for possible institution of navigability litigation. Because of the extensions, decisions on whether to bring these suits have been postponed. However, it is inevitable that, as long as there is a limitations period on the time which the State has to assert title, there will be a large number of cases brought by the State each year to preserve its claim of title to certain submerged lands.

Litigation is costly and time consuming not just for the State, but also for the Federal government, regional Native corporations, and village corporations. Moreover, the judicial system could be inundated by this largely unnecessary litigation.

This can easily be illustrated by the complaint filed by the State on the Tazimina River system in February, 1986. The suit was brought prior to a one-year extension of the limitations period in Section 901. Although the particular conveyance that was subject to the limitations period only involved part of the Tazimina River, applicable case law requires that navigability litigation be brought on the entire river system. As a result, the State was compelled to file the complaint against the Federal government, a regional corporation, and three village corporations. That complaint was dismissed without prejudice in July of 1986 after enactment of the one-year extension.

The potential for large amounts of litigation is high because the State has generally not agreed with the criteria used by BLM to make administrative determinations of navigability. These determinations are made by BLM prior to interim conveyance or patent of land to Alaska Natives or Native corporations.

Until recently, the progress of ongoing efforts to establish judicial criteria for navigability determinations in the State has been relatively slow. There is a recent decision by the U.S. District Court in Alaska concerning the navigability of portions of the Gulkana River. This decision establishes certain basic criteria for determining the navigability of rivers in Alaska that are considerably more liberal than those used previously by the BLM. (State of Alaska v. United States, et al, Case No. A80-359 Civ, U.S. Dist. Ct. Alaska, April 16, 1987). To date, there have been few determinative decisions on criteria for navigability of lakes in Alaska.

It is true that the State and many others originally supported the language in Section 901. However, experience and further legal research have shown that the proponents of this approach were in error. Underlying the Section 901 controversy is the basic principle that pursuant to the equal footing doctrine, the State took title to submerged lands beneath navigable waters upon entry into statehood.

No other state has a time limitation placed on its ability to assert submerged land claims.

Furthermore, the sheer magnitude of the task of identifying land that might be subject to the limitations period in sufficient time to bring an action under Section 901 puts an immense burden on the State. As I mentioned earlier, there is continuing uncertainty concerning the criteria for determining navigability in Alaska. In addition, much of the land being conveyed by the Federal government has yet to be surveyed. As a result, many land transfers are accomplished by interim conveyances or tentative approvals to Natives, Native corporations, or the State. These conveyances are often inaccurate because of poor photographing or mapping, or lack of mapping.

For these reasons, the State of Alaska filed suit in December, 1981, challenging the constitutionality of Section 901(a) on equal footing and due process grounds. The case was stayed at the request of all of the parties in the spring of 1983, so that alternative remedies could be pursued in Congress. At that time, the parties were in the preliminary stages of discovery. Since then, there have been several extensions of the stay, and there has been no further activity on the case, in the hope that Congressional action would resolve the present conflict.

Because of the situation that I have described, the existence of the limitations period provokes litigation by the State simply to preserve its ability to claim title to submerged lands. To prevent that result, H.R.2629 would establish a situation comparable to that found in other states, where litigation occurs only when specific interests, such as oil and gas rights, are involved. Since the artificial stimulus of an unnecessary statute of limitations would be removed, lawsuits involving only real disputes would be spread over many years.

Use of the BLM Survey Manual

The other significant and related issue concerning ownership of submerged lands in Alaska arose out of the initial failure of DOI to use the rules of survey contained in the Manual of Instructions for the Survey of the Public Lands of the United States (1973). I would like to emphasize that these standard rules of survey are used for conveyances to all other states and public land entrants.

The rules require that only uplands be surveyed. Lakes 50 acres or larger and rivers and streams 198 feet in width or wider are segregated from the public lands. The recipients of conveyances from the Federal government are charged only for the amount of public land identified by a proper survey. Riverbeds and lake bottoms that meet the criteria set out above are not included in that figure. Except for rivers and lakes smaller than the administrative criteria, navigability determinations do not affect the amount of land conveyed in fulfillment of acreage entitlements. There is no reason to believe that Congress intended that a different survey and conveyance procedure should apply to conveyances to the State or Alaska Natives.

Beginning in 1981, the State, the Natives, and the Department of the Interior began discussions on alternative ways of solving the problems resulting from Section 901 and the survey problem just described. In 1983, the three parties agreed to a solution: the statute of limitations should be repealed. In addition, the traditional procedures for segregating waterbodies set out in the BLM survey manual should be applied in Alaska as elsewhere.

On December 5, 1983, the Interior Department published a notice in the Federal Register announcing its decision to use the BLM survey manual rules in Alaska. The Sierra Club and the Wilderness Society filed suit in the U.S. District Court for D.C., challenging the validity of that action and the process used to reach the decision.

Plaintiffs' complaint was dismissed by the U.S. District Court, principally for lack of standing. That ruling has been overturned by the U.S. Court of Appeals for the District of Columbia, and the case has been remanded to the District Court for further action. The judge has scheduled a status call for early November.

In our opinion, a dispositive ruling on the issue of standing and on the merits of the current suit will not be forthcoming for a long time.

Concerns have been expressed that application of the survey manual would result in additional lands going to the State or to Native corporations because they are not being charged for lands underlying lakes of greater than 50 acres or rivers wider than 198 feet that turn out to be non-navigable. To address this issue, in 1984, the State, in consultation with the BLM and the Native community, arrived at an estimate of the amount of such acreage. Because the State takes title to lands underlying navigable rivers and lakes under the Submerged Lands Act and the equal footing doctrine, and not as part of its acreage entitlement under the Statehood Act, the criteria used to decide navigability are essential elements in determining whether additional acreage is going to the State or Native Corporations because of the application of the survey manual. The State study produced three different estimates of acreage impacts based on different assumptions concerning navigability criteria.

The Bureau of Land Management (BLM) also recently conducted a study of acreage impacts using existing judicial and administrative navigability determinations. The two studies employ similar methodologies to arrive at their estimates. In comparing the studies, the Alaska Department of Natural Resources and the BLM concluded that the differences between the range of figures arrived at by the State and the BLM are attributable primarily to the application of different navigability criteria.

Using existing judicial and administrative navigability determinations, BLM estimates an impact of approximately 1.8 million acres. We believe that the actual number is lower, because the BLM figures include very conservative assumptions concerning navigability criteria. Employing less conservative assumptions that appear to be realistic, particularly in light of the recent Gulkana decision, the State has estimated a total impact of approximately 783,000 acres.

The estimate of the amount of affected submerged lands in conservation system units (CSU's) is much less than even these figures. Furthermore, we do not believe that the impact on CSU's from additional upland selections as a result of the application of the survey manual will be significant in terms of land management. The State is not generally able to make additional selections in CSU's. The potential for additional Native selections within CSU's is primarily in the Yukon Delta and Bristol Bay areas. Land there is principally selected by Native corporations for habitat value. Therefore, the impacts on CSU purposes or land management should be minimal.

While the State believes that the impact on CSU's from application of the BLM survey manual will not be significant, we also think that it is the policy and legal considerations that should control Congressional decision-making on this issue. The BLM survey manual is used consistently in all other states for the conveyance of Federal lands to public land entrants. We do not believe that Congress intended Federal land conveyances in Alaska to be handled differently from those in all other states. Nor do we feel that there is any rationale for different practices in Alaska.

I would like to emphasize that the controversy concerning acreage chargeability and the statute of limitations in Section 901 is not new. The problem was recognized shortly after the passage of ANILCA. The State, the Natives, and the Department of the Interior have been working on a resolution to the problem since 1981. A legislative resolution was first proposed by the parties in 1983. In our opinion, this approach has withstood careful scrutiny over a long period of time.

Only recently, certain interest groups have proposed another alternative. We believe that this proposal is too little and too late. It seeks to address only half the problem -- the statute of limitations contained in Section 901 of ANILCA -- and does not deal with the other very important issue of application of the BLM survey manual.

Accordingly, we urge the Subcommittee to support passage of H.R.2629 as the best and most comprehensive resolution of the submerged lands issue in Alaska. Enactment of this legislation would ensure that both the State and Alaska Natives would receive their full entitlements under the Statehood Act and the Alaska Native Claims Settlement Act. The legislation would also prevent unnecessary litigation and expense to the State, the Federal government, and Alaska Natives.

Before concluding, I also want to indicate the State's support for the language in H.R.2629 which would require Congressional approval of any land exchanges involving acreage in the Arctic National Wildlife Refuge (ANWR). In our opinion, Section 1002 of ANILCA already contemplates such approval. Moreover, the Secretary of the Interior has previously indicated his intention, as a matter of policy, to submit for Congressional approval any ANWR land trade which he may ultimately sanction. In our judgment, consummation of such trades would represent a major public policy decision which should involve the Congress.

Thank you for this opportunity to appear here today.

Senator **Murkowski**. Thank you, Mr. Katz.

Mr. Gustafson.

STATEMENT OF GARY GUSTAFSON, CHIEF, LAND MANAGEMENT SECTION, DIVISION OF LAND AND WATER MANAGEMENT, ALASKA DEPARTMENT OF NATURAL RESOURCES

Mr. **Gustafson**. Mr. Chairman, for the record, I am Gary Gustafson, Chief of the Land Management Section in Alaska's Department of Natural Resources.

I would like to make three very brief points, and I have also brought with me several charts that I think will be helpful, given the complexity of this particular issue.

First of all, the adoption by the Bureau of Land Management of the 1983 policy to use BLM's Manual of Surveying Instructions as the basis for determining acreage chargability in Alaska for Native Corporation and state land conveyances does not represent a shift in policy in BLM's survey priorities and practices.

There is nothing in either the Alaska Statehood Act or the Alaska Native Claims Settlement Act that prohibits the meandering of water areas during the survey process.

In fact, the survey of all public lands granted to all public land states in the country, including Alaska, is performed in accord with the meandering instructions that are contained in that manual.

Secondly, the implementation of the Manual of Survey Instructions does not alter by one acre the Congressional land grants bestowed upon both the state and the Native Corporations.

Rather, it helps ensure that the state and the corporations receive useable upland acreage, instead of submerged lands, as a part of those entitlements.

And third, do not be confused by attempts to portray the bill as an attempt to exclude large submerged land acreage from Federal ownership. The state and the Bureau of Land Management have completed several studies in an attempt to accurately define these impacts.

The largest variable in these estimates is the effect of future navigability decisions. Submerged lands under navigable waters are owned by the State of Alaska as an incidence of statehood and are excluded from state and Native entitlement figures.

The State of Alaska has estimated that a maximum, and I stress maximum, of approximately 783,000 acres of submerged lands might be affected by this bill.

However, this figure was arrived at before recent court decisions, most particularly the 1986 U.S. District Court decision in Gulkana River, whereby the courts have broadened the definition of navigability in its application in Alaska, which better suits the state's definition.

Our estimate of the effects of this Gulkana River decision further narrows the potential impacts to approximately 300,000 acres. And that is 300,000 total acres.

Senator **Murkowski**. I wonder if you could bring that chart up a little closer.

Mr. **Gustafson**. For purposes of definition, I would like to define all water bodies as essentially one of three parts.

Senator MURKOWSKI. Maybe you could bring your microphone over a little bit too. Thank you.

Mr. GUSTAFSON. Essentially we have, first, navigable waters, which are state-owned. Secondly, we have non-navigable waters, which are lakes over 50 acres and rivers wider than 190 feet or three chains.

Senator MURKOWSKI. Those are non-navigable?

Mr. GUSTAFSON. Non-navigable. We have got navigable, which is state-owned, where there has been a decision. And then areas where there has not been a navigability decision.

And in those cases, either we have got non-navigable, where there are over 50 acres or larger than three chains, or non-navigable less than 50 acres, smaller than three chains.

I mentioned the BLM and state studies. The State of Alaska has actually done two studies, one in 1982 and one in 1984. The Bureau of Land Management has completed a study earlier this year.

These studies have produced a product, as I explained, that has evolved because frankly as we have approached these, our database has gotten better. And we have continually tried to define that database so we could be as accurate as possible.

BLM and the state have used essentially the same methodology in our 1984 study and their 1987 study. And the reason why there are differences in the BLM and state acreages is because the state used a broader, a more lenient, if you will, a liberal interpretation of what is navigable water, whereas BLM used a narrower interpretation.

The state's estimate was the total impact for both state and Native lands could be as high as 783,000. BLM's was 1.895 million.

And finally, following the Gulkana River decision, we felt an obligation to factor in what we believed to be the tenets of that U.S. District Court decision. And in that, we divided the submerged acreage that might be affected into rivers and lakes. We have got state acres and ANCSA acres, the Native Corporation acres.

We essentially believe that in the State of Alaska there will be few, if any, rivers wider than 198 feet that will not be found navigable. The only possible context might be a stream emanating from a glacier that goes right into tide water.

Otherwise, we believe that under the Gulkana decision we will have all rivers determined to be navigable, if they are of that size.

And lakes, we have an impact analysis of lakes resulting in approximately 300,000 acres of total impact, both state and Native lands.

And then finally, just for illustrative purposes once more, I have got an example here of what a hypothetical section might look like. A section is 640 acres. And let us say that this was a section that was to be conveyed to the State of Alaska or a Native Corporation.

In it we have got a navigable river running through the section. We have a larger lake, a lake larger than 80 acres. And a smaller lake of 30 acres.

We also have a small stream here that is navigability undetermined, there has been no navigability decision yet. But it is 200 feet wide. Larger than three chains. We also have a small stream here that is under three chains.

Okay, if BLM under the Manual of Survey were now to meander out these waters for conveyance purposes, what would it look like?

And that is where this chart comes in. Essentially, the navigable river would be excluded because it would be owned by the State of Alaska, the submerged lands under it would be owned by the State of Alaska.

The large lake over 80 acres would be excluded, as would the river, greater than three chains. Everything else would be conveyed to the state or to the Native Corporation, depending upon who BLM were conveying this hypothetical section.

[The prepared statement of Mr. Gustafson follows:]

TESTIMONY OF GARY GUSTAFSON
CHIEF, LAND MANAGEMENT SECTION
DIVISION OF LAND AND WATER MANAGEMENT
ALASKA DEPARTMENT OF NATURAL RESOURCES
BEFORE THE
SENATE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL
PARKS AND FORESTS
OCTOBER 20, 1987

Mr. Chairman and Subcommittee members:

My name is Gary Gustafson, and I am Chief of the Land Management Section within the Division of Land and Water Management of the Alaska Department of Natural Resources. I have held this position for the last three years, during which time I have been involved with submerged lands and navigability issues in Alaska.

It is my intention to supplement the testimony of John W. Katz by briefly describing the application of the Bureau of Land Management (BLM) Manual of Survey to the conveyance of Federal public lands to the State of Alaska. I will also explain the methodology used by the State of Alaska to estimate the acreage of submerged lands in State and Native corporation land conveyances which is likely to be affected by the implementation of this legislation. In addition, I will compare the State's submerged lands study with one recently compiled by the Federal Bureau of Land Management (BLM).

Pursuant to the Alaska Statehood Act, the State of Alaska received a total land entitlement of approximately 104.8 million acres, while Alaska's Native corporations received approximately 44 million acres under the Alaska Native Claims Settlement Act (ANCSA). The State also received title to submerged lands underlying navigable waters as an incidence of statehood. These submerged lands are transferred to the State, in addition to, not as a part of, the previously referenced State entitlement acreage.

In September of 1984, the Alaska Department of Natural Resources completed a study of the acreage in Alaska which might be affected by BLM's application of the 1973 Manual of Instructions for the Survey of Public Lands of the United States to State and ANCSA land conveyances. The manual requires that submerged lands, meaning rivers over 198 feet wide and lakes larger than 50 acres, be surveyed out and excluded from land conveyances to th State and ANCSA corporations. The BLM Manual of Survey practices are not a means of determining whether or not a particular waterbody in Alaska is navigable. Instead, they are a standard method of identifying public lands for purposes of Federal conveyances and resultant acreage chargeability.

The purpose of the study was to identify in land conveyances to the State and ANCSA corporations, the amount of acreage underlying lakes larger than 50 acres and rivers wider than 198 feet that might be nonnavigable. The reason for attempting to quantify this acreage was to respond to concerns that the State and ANCSA corporations might receive additional lands beyond their entitlement due to the exclusion of certain lands underlying nonnavigable waters from public land conveyances.

The State's study was initiated using U.S. Geological survey Professional Paper #482, entitled "Physiographic Divisions of Alaska", to divide the State into seven physiographic categories, ranging from flat to mountainous terrain. The State used all seven categories to estimate acreages. BLM lumped together several of these categories that were closely related, resulting in only three categories. Random sample townships were then selected from within each physiographic category. The State sampled a total of 4,116,480 acres, or roughly three percent of the total State and ANCSA land entitlements.

After the sample areas were selected, the acreage of submerged lands was determined using the criteria contained in BLM's survey manual. USGS 1:63,360 topographic quadrangle maps were used to delineate waterbodies. Using this data base, the State established average water to land ratios representative of each physiographic category. These ratios were then applied to the amount of land within each category expected to be conveyed. The result was an estimate of the total number of affected acres by physiographic type.

Some study qualifications are worthy of further explanation. First, the State's estimates of conveyance acreage within physiographic categories were based upon land status patterns in 1979. The amount of acreage remaining to make up final State and ANCSA entitlements was computed using a constant multiplication factor for each category. However, since that time the State has been conveyed an additional 28 million acres. Furthermore, ANCSA corporations and the State have received additional land conveyances and made selection relinquishments. These activities may not be entirely consistent with our expectations regarding the remaining State and ANCSA conveyances.

More significant, however, is the effect of navigability decisions (both prior and anticipated) upon the submerged lands estimates. To further refine the study results, the State also factored in two navigability considerations in order to produce two final submerged land acreage results.

First, the State subtracted from the total those waterbodies already determined navigable by BLM (as of 1982). This subtraction reflected BLM's rather conservative navigability stance, largely encompassing those decisions which occurred prior to the December, 1979 Alaska Native Claims Appeal Board (ANCAB) decision on the Nation and Kandik Rivers. This decision reversed a prior BLM determination which found these rivers nonnavigable and broadened the ground rules pertaining to historic use of a waterbody as a consideration in determining whether a waterbody has been used, or is susceptible of use as a highway of commerce for purposes of navigability. After subtracting only those waterbodies found navigable prior to 1982 from the sample area, the State estimated that an upper threshold of approximately 3.7 million acres of submerged lands in Alaska might be affected by application of the Manual of Survey.

Second, the State then again estimated the amount of submerged lands, this time after first applying an additional navigability factor, based upon our reading of the Kandik-Nation decision. This estimate resulted in a threshold of approximately 783,000 acres of submerged land.

BLM, using a slightly altered reading of Kandik-Nation, did not subtract acreage associated with navigable lakes and estimated a maximum of 1,895,082 acres of submerged lands which might be excluded by application of the survey manual.

Prior to reaching any final conclusions regarding these estimates, it is also necessary to recognize the influence of the December, 1986 U.S. District Court decision pertaining to the Gulkana River (Alaska v. United States). Ruling for the State, the court rejected the Federal government's restrictive interpretation of the "customary mode of transportation" element of a title navigability test. This considerably broadened the definition of commerce and commercial transportation on Alaska's rivers. Application of the guidelines rendered in this decision to public land conveyances should further lower the acreage estimates in both the State and BLM studies. For instance, if the *Gulkana River* decision can be assumed to provide that all rivers over 198 feet wide, one-half of lakes between 50 and 149 acres, and all lakes over 150 acres are navigable, the resultant impacts on excluded submerged lands from State and Native conveyances would be reduced to *about 300,000 acres*. This acreage consists entirely of lakes, most in the relatively small size range. In fact, should the *Gulkana River* decision be determined applicable to lakes, with the result that all rivers over 198 feet and lakes over 50 acres are navigable, the resultant acreage effect to State and Native land conveyances could be reduced to zero.

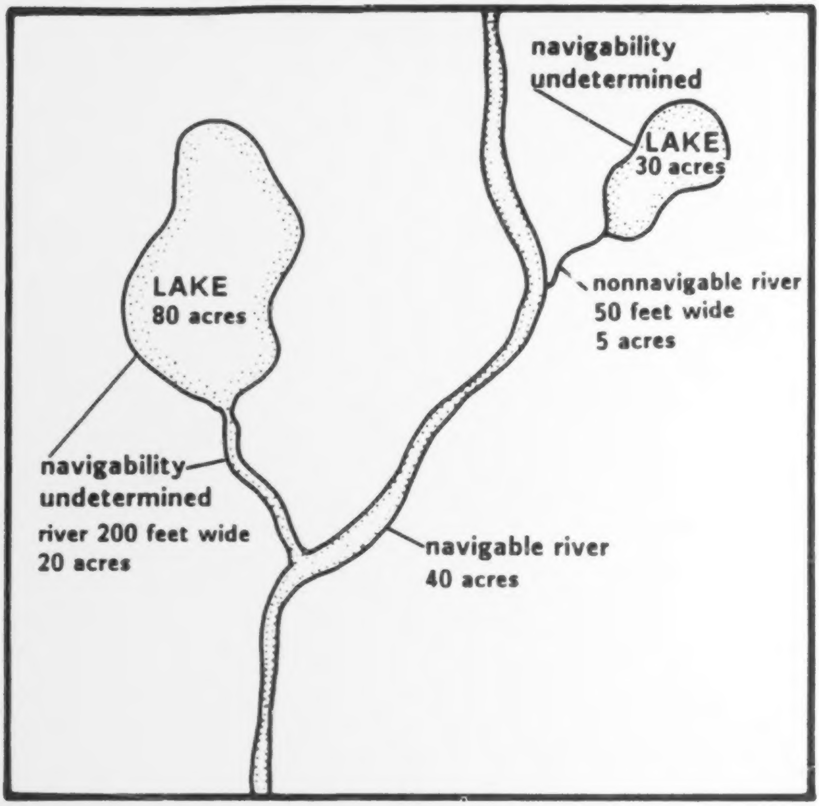
Furthermore, the State and DOI entered into a Memorandum of Understanding in March of 1984 which provided that the acreage of submerged lands in lands patented to the State prior to December 5, 1983 (21.4 million acres) will be recalculated at State expense to conform to the survey manual. The State has not yet asked BLM to recalculate the acreage of any pre-1983 patents in accord with the survey manual. Therefore, additional reductions to the BLM State acreage estimate are likely (approximately 20 percent of the total).

Finally, I would like to describe the possible effect of submerged lands conveyance exclusions as a result of the survey manual on Federal conservation system units (CSU's) in Alaska. BLM agrees with the State that there will be no impact on CSU's from such exclusions on State conveyances. The BLM study estimated that up to 713,038 acres of submerged lands could be excluded from Native conveyances within CSU's. However, this estimate does not reflect the recent *Gulkana River* decision. While I know of no study which has attempted to further refine BLM's CSU impact estimates by factoring in *Gulkana River* type navigability acreage reductions, I believe it is safe to assume that such reductions should be significant, particularly if lakes are encompassed. This would reduce any CSU impacts substantially. The actual number will be primarily dependent upon ANCSA corporation overselection priorities and final navigability determinations.

However, no matter what the acreage impacts, it also seems clear that Congress recognized that ANCSA corporations would receive their full entitlements pursuant to ANCSA, and that the State would receive title to its statehood entitlement lands as well as the submerged lands under navigable waters pursuant to the Submerged Lands Act, the Equal Footing Doctrine and the Alaska Statehood Act. Therefore, the only remaining question is which waterbodies are in fact navigable. That question remains properly outside the scope of this proposed legislation.

I appreciate the opportunity to make this presentation and would be pleased to answer any questions.

HYDROGRAPHIC SAMPLE


navigability
undetermined
LAKE
30 acres
nonnavigable river
50 feet wide
5 acres
LAKE
80 acres
navigability
undetermined
river 200 feet wide
20 acres
navigable river
40 acres

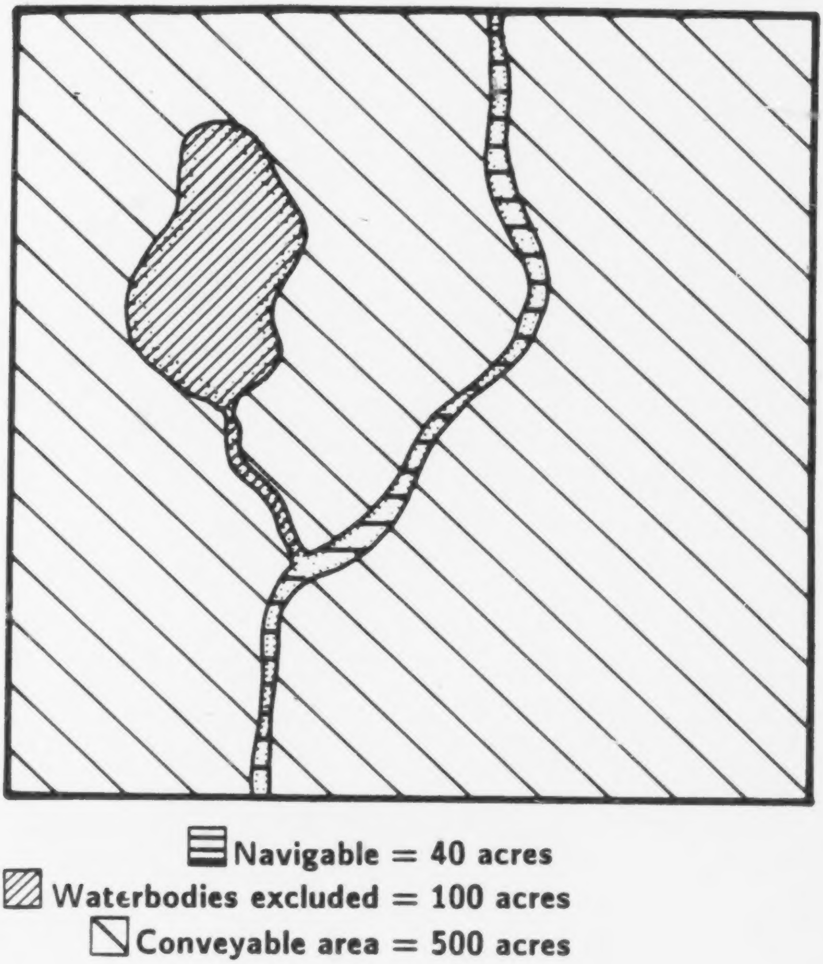
640 ACRES

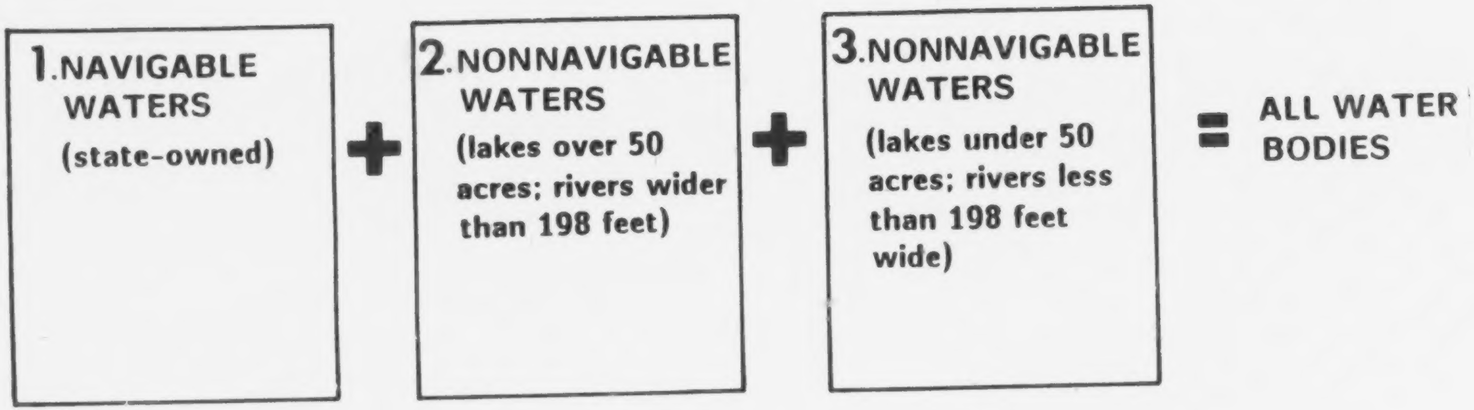
Navigable = 40 acres

Nonnavigable = 5 acres

Navigability undetermined = 130 acres

USE OF 1973 BLM MANUAL OF SURVEY


▤ Navigable = 40 acres
▨ Waterbodies excluded = 100 acres
⧄ Conveyable area = 500 acres


1.NAVIGABLE WATERS
(state-owned)
+
2.NONNAVIGABLE WATERS
(lakes over 50 acres; rivers wider than 198 feet)
+
3.NONNAVIGABLE WATERS
(lakes under 50 acres; rivers less than 198 feet wide)
=
ALL WATER BODIES

ESTIMATED SUBMERGED LANDS EXCLUSIONS

STUDY	STATE ACRES	ANCSA ACRES	TOTAL ACRES
DNR (1982) - deletes all pre-Kandik/Nation navigability decisions	2,261,558	1,450,629	3,712,187
DNR (1984) - Kandik/Nation reflection	460,000	278,000	783,000
BLM (1987) - Kandik/Nation reflection	693,462	1,201,620	1,895,082

ESTIMATED EXCLUSIONS FOLLOWING GULKANA RIVER DECISION
(STATE OF ALASKA)

	STATE ACRES	ANCSA ACRES	TOTAL ACRES
Rivers	0	0	0
Lakes*	180,000	120,000**	300,000

* The state interprets the Gulkana River decision to include lakes.

** Includes approximately 100,000 acres in CSU's.

Senator MURKOWSKI. I am wondering if the legislation is enacted, is it your interpretation that the state will be entitled to select additional lands to replace lands that are under meandering water bodies charged against the state in their 1983 entitlement?

Do you know how the acreage would be calculated? And would this be done at the state's expense or the Federal government?

Mr. GUSTAFSON. Lands that are already conveyed to the State of Alaska? Is that your question?

Senator MURKOWSKI. Yes. In other words, will the state be entitled to select additional lands to replace lands under meandering water bodies charged against the state's entitlement prior to 1983?

Mr. GUSTAFSON. First of all, Mr. Chairman, the State of Alaska has already over-selected from its entitlement, which it is allowed to do under ANILCA.

Our feeling is it may not be necessary for the State of Alaska to make any new selections, in order to accommodate any adjustments that may be made by the meanderability of the submerged lands.

Senator MURKOWSKI. All right, gentlemen. I have no further questions. I want to thank you and wish you good day.

I might for the benefit of panel six that I have just been advised that we have two back-to-back votes. The first one is on a 15-minute roll call, and the other one is on a 10-minute roll call. If at all possible, I would like to accommodate the witnesses within the necessary timeframe.

So Mr. Meeds, Mr. Reffalt, and Mr. Hession, if you gentlemen would care to come up and be seated, and proceed with your testimony.

I suppose if you can accommodate the schedule, it would help both of us, because it is going to be a half hour before I get back, with two back-to-back votes. Mr. Meeds, you are first on my list.

STATEMENT OF LLOYD MEEDS, ON BEHALF OF THE CALISTA CORPORATION

Mr. MEEDS. Does the Senator wish us to proceed or to wait until you return?

Senator MURKOWSKI. I would wish you to proceed, if you think you can accommodate.

Mr. MEEDS. So we can be approximately equal here——

Senator MURKOWSKI. I have got two votes and I am going to have to leave.

Mr. MEEDS. How soon will the Senator have to leave?

Senator MURKOWSKI. You have got about 12 minutes between the three of you.

Mr. MEEDS. I would ask for six of those, because both of these gentlemen will be testifying for the same thing.

Thank you very much, Senator. I appreciate your tenacity in this issue three times. I ask unanimous consent that the written statement I have prepared be entered in the record.

Senator MURKOWSKI. Without objection.

Mr. MEEDS. I will not iterate the longstanding support of Calista Regional Corporation, whom I represent here, for the resolution of this longstanding dispute.

I just bring to the Senator's attention and to the Committee's attention two additional issues, one of which is an opportunity I think for the Senate to make additional lands, or to prevent additional lands from being taken from conservation system units.

As the Senator knows, some additional acreage will be made available to Native Corporations, particularly in the Calista region. Much of that upland will be in conservation system units, primarily, almost entirely wildlife refuges.

We are asking and suggesting that regional corporations be allowed to trade out the subsurface to those so it will not create additional inholdings in conservation system units.

The state favors this, the other Native Corporations favor it. I would think the conservationists would also favor it because it will prevent inholdings in the conservation system units. And I will submit as attachment one of my testimony, a proposal which does that, Senator Murkowski.

Secondly, a problem which has arisen, and we have heard much about the Gulkana River decision here today. That really is going to impact very seriously upon Native selections and lands already selected by Natives.

I will just use this as an illustration. As a 10,000-acre piece, the one strip was——

Senator MURKOWSKI. Gentlemen, in fairness to you, I do not think we can conclude this within the timeframe.

So you will just have to assume that I will come back as soon as I am able. Because I do not want to have you rush your testimony to the point where you feel uncomfortable. So go ahead, Mr. Meeds.

I will be here for a couple more minutes. And then we will recess until I return. But we are going to have another one in 10 minutes. That is the difficulty. I think what I will do is, I will stay over on the floor for the second vote. Go ahead.

Mr. MEEDS. Under the criteria imposed by the BLM in its original selection process, this 1,000 acres would be excluded because it would be held under their criteria to be navigable.

Senator MURKOWSKI. That is a very, very difficult chart for me to interpret. It is not that I do not believe you. But it is hardly making an impression.

Mr. MEEDS. Well, I guess I do have it upside-down.

Senator MURKOWSKI. That really does not help much. If you turned it around to the audience in the back, maybe they would have the same reaction that I would.

I can see it, but I cannot decipher anything. But go ahead.

Mr. MEEDS. This represents a 10,000-acre conveyance. Under the BLM's original criteria for navigability, this would be navigable, and would be excluded, and would be added to the Native selection over here.

This, the dotted lines, would not be excluded, would not have been excluded under the original criteria. But would be under the Gulkana River description.

There is no provision for adding that. And I am suggesting, Mr. Chairman, that language be placed in this bill which will make it clear that that should be added. Again, the state supports this.

I am sure the conservationists also support it, because they have made a proposal very similar to this in their own proposal. I know of no opposition to this. And it may be under present law this would happen anyhow.

But we would really ask that the Senate make clear that it happens in this legislation, so we do not have to go through what we have had to go through.

Senator **Murkowski**. We are going to have to recess now. We would like for the record to have an indication of whether it is correct the state does support that particular point.

Why don't we recess now and you can talk about it and let me know when we come back.

Mr. **Meeds**. Mr. Katz told me he did support it when I talked to him before.

Senator **Murkowski**. We will talk about it later.

[Recess.]

Senator **Murkowski**. Thank you, gentlemen. I apologize for the inconvenience.

I think Mr. Meeds, you were showing us a map that we could not see.

Mr. **Meeds**. I will just conclude by indicating that I feel relatively certain, having talked to Mr. Katz about this issue, that he supports, the State of Alaska supports this concept, that the other regional corporations and the Natives support the concept, and the environmentalists who will be testifying here have it in their proposed bill.

And I am certainly prepared to live with the language that they are proposing.

Senator **Murkowski**. Do I see an acknowledgement from the State of Alaska?

Mr. **Katz**. Yes, sir.

Mr. **Meeds**. Just to conclude, Mr. Chairman——

Senator **Murkowski**. Let the record note that that was Mr. Katz responding.

Mr. **Meeds**. Finally, largely because of this problem with the Gulkana River case, my clients, Calista, have some problems with some reservations about the legislation in its present form.

With the changes we have proposed we enthusiastically support it.

[The prepared statement of Mr. Meeds follows:]

TESTIMONY OF LLOYD MEEDS
ON BEHALF OF THE CALISTA CORPORATION
BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS OF THE SENATE COMMITTEE ON ENERGY AND NATIONAL RESOURCES
OCTOBER 20, 1987

MR CHAIRMAN, My name is Lloyd Meeds. I am a partner in the law firm of Preston, Thorgrimson, Ellis and Holman, which firm is Washington, D. C. counsel for Calista Corporation, a native regional corporation created under the Alaska Native Claims Settlement Act of 1971.

I appear here today on behalf of Nelson Angapak, President of the Calista Corporation, and the stockholders of that corporation.

Calista is the second largest Alaska Native Regional Corporation, both in terms of geography and native population. All of the Calista region villages are located along coastal or inland water bodies-- all of the village corporations have selected at least one township which is covered by more than 25 per cent water. Indeed, the Calista Regional Corporation and the village corporations within that region are far and away the most effected native corporations in the entire State of Alaska by the submerged lands issue.

For this reason, I am certain you can understand the importance of the issue to President Angapak, the stockholders of the regional corporation, and the stockholders of all the village corporations within the region.

Mr. Chairman, I would first like to testify regarding the need to resolve this long standing problem. I would then like to testify briefly about an opportunity which could be made available by adding a special provision. Finally, I would like to discuss a special problem that has arisen since we last testified before the Congress on this issue. That problem arises because of the case of State of Alaska v. United States, A80-359 Civil, cited December 14, 1986, (Gulkana River case).

First, Mr. Chairman, stockholders in the Calista Region, and Alaska Natives generally, opposed the BLM decision in 1971 to implement a different system for the ascertainment and chargeability of submerged lands than had been theretofore utilized by the BLM. For nearly 100 years the BLM has, in varying degrees, implemented the decision of the United States Supreme Court in the case of Hardin v. Jordan, 140 U.S. 371 (1891). In that case, the court said, "it has been the practice of the government from its origin in disposing of public lands, to measure the price to be paid for them by the quantity of upland granted, no charge being made for lands under the bed of the steam or other body of water."

Subsequent to that decision, BLM policy has been consistent in other states of the Union: specifically beds of non-navigable bodies of water belong to the upland owner, and the upland owner is not charged for the acreage.

In 1971, the Alaska Native Claims Settlement Act (ANCSA) was passed. Under this legislation, Alaska native corporations were to receive title to approximately 44 million acres of public lands. But the BLM did not make conveyances under their long standing policy. The native corporations were charged for almost all conveyed lands. As a result, a significant percentage of land entitlement was charged against the native corporations despite the fact that the lands were under water. This decision was absolutely contrary to departmental policy and the policy being implemented in all the other states of the Union. In those states and under the departmental policy, the manual for survey was and is followed. The Manual of Instructions for Survey of Public Lands of the United States (1947) required that navigable bodies of water, as well as all lakes equal to or larger than 25 acres and streams and rivers equal to or wider than three chains (approximately 198 feet), were to be excluded from the public lands and such acreage not charged against the entitlement of the upland owner. The manual was revised in 1973 to change the size of the lakes from 25 acres to 50 acres. This is the procedure followed today in all other states but Alaska. Since the beginning of public lands surveys, it is the manual in force at the time of survey that is controlling.

For this reason, the native corporations should have been entitled to exclude from lands chargeable against their entitlement all lakes of 25 acres or more and all streams and rivers equal to or wider than approximately 198 feet. Despite that, we are now supporting the legislation before you, which adopts the Manual of Survey as revised in 1973, and which changes the size of lakes from 25 acres to 50 acres. I suggest this constitutes a substantial concession by the natives to achieve a compromise acceptable to all parties.

From the passage of the Alaska Native Claims Settlement Act (ANCSA) in 1971, Alaska natives generally and Calista Corporation natives in particular felt something should be done to rectify this inequity. At various times lawsuits were discussed, but the decision was made to attempt a legislative resolution. The first opportunity for major changes in ANCSA occurred with the beginning of the consideration of the Alaska National Interest Lands Conservation Act (ANILCA), in 1978. While a resolution similar to the manual of survey of 1973 was incorporated in the House bill, Senate language was adopted, and it is contained in the Alaska National Interest Lands Conservation Act signed by the President in 1980. Without getting into a great deal of detail, Section 901 of ANILCA set a statute of limitations in which the State of Alaska would be limited to five or seven years to challenge whether certain water bodies were navigable.

Despite the fact the state was the prime mover of Section 901 rather than the House version relating to submerged lands, in 1981 the sportsmen and the State of Alaska filed lawsuits challenging the constitutionality of Section 901 of ANILCA. Those two lawsuits have been combined and are presently pending in the District Court for the District of Alaska.

The uncertainty caused by the lawsuits and more sober reflection on Section 901 by the state and other parties led to continued negotiations among Alaska natives, the state, and the BLM. In December, 1983, a new policy was published in the FEDERAL REGISTER whereby neither the native corporations nor the state would be charged acreage against entitlement for water bodies that are meanderable in accordance with the BLM manual of survey (1973). Those acreages are 50 acres are more for lakes and approximately 198 feet for streams.

On June 14, 1984 the Wilderness Society and Sierra Club filed suit in U.S. District Court for the District of Columbia challenging the validity of that action. On January 30, 1986, Judge Pratt held against the Wilderness Society and Sierra Club primarily on the basis of standing. That ruling has been affirmed in part and reversed in part by the Circuit Court.

While the chargeability of acreage against the state and native entitlements was resolved by the administrative implementation of the BLM Manual of Survey (1973), the problem of the statute of limitations and the prospect of numerous lawsuits to determine the question of navigability under Section 901 of ANILCA was not resolved. For this reason, negotiations continued between the state, natives, and BLM. As a result of these negotiations, legislation was drafted and introduced in both the House and Senate. With some exceptions, none of which effect the substance of the legislation which we are presently considering, HR 2629, carries forth the intent of the natives, the State, and the BLM in those negotiations.

Calista Corporation has been involved in all of the law suits in Alaska on Sec. 901, and the action presently pending in Wilderness Society, et al. v. J. Steven Griles, et al. Additionally, we have been involved from the outset in discussions and negotiations with the State, BLM and conservation groups attempting to reach an amicable settlement of this dispute. At all times we have been open to suggestions from others, which could require compromise on our part. Additionally, we have advanced several concepts which we felt would lead to a resolution along the concepts contained in HR 2629.

Unfortunately, Mr. Chairman, all of these efforts have been without success.

When President Angapak testified before a Subcommittee of this Committee last year on this very issue, he pointed out that the Alaska Native Claims Settlement Act provides in part, "The settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of natives, without litigation...." He said at that time, "The only certainty is that Alaska natives have had to - and are likely to continue to have to - fight in court to obtain favorable interpretation of that act."

Fifteen years have passed, and the natives in the Calista Region are nearly $200,000 poorer and are still trying to resolve a relatively simple matter that should have been resolved favorably for them long ago.

Passage of HR 2629 would bring an end to this long and thusfar unproductive effort. Enactment into law of this concept will provide equity to the State of Alaska and Alaskan natives, will prevent protracted and costly litigation between the State and the native villages, will resolve pending cases regarding chargeability and other matters, will reduce delays in conveyance of native and State lands, and will reduce friction and antagonism between all the parties.

Secondly, Mr. Chairman, we would like to propose a change which we feel should be acceptable to most if not all the parties who have been concerned with this issue.

Retroactive implementation of the 1973 Manual of Survey will result in some additional uplands being made available for native corporations. Some of those uplands - particularly in the Calista region - will lie in conservation system units - primarily wildlife refuges.

Mr. Chairman, we propose that native regional corporations be allowed to take their additional subsurface outside of CSU's rather than creating additional inholdings in the CSU's.

Again, Mr. Chairman, this will primarily effect the Calista region because of the number of Calista Region Villages in the Yukon Kuskokwim National Wildlife Refuge.

I attach a proposed Amendment (attachment 1) which effectuates this purpose. I would think the conservation organizations would support it because it will lessen the inholdings in CSU's.

Finally, Mr. Chairman, I wish to discuss an issue which has arisen since this committee last considered this issue. While it is not a submerged lands matter, it is a navigability issue which is closely associated and which effects and impinges upon the lands made available to native people under the Alaska Native Claims Settlement Act (ANCSA).

As you know, navigable waters were and are to be excluded from the lands available for conveyance to native corporations. This was originally done by criteria imposed by the BLM. But the BLM is not the final arbiter of navigability - that arbiter is the court system - recently, in the Gulkana River case, the District Court for Alaska adopted criteria for determining navigability which is much more liberal than that originally used by the BLM. The effect of this could be to charge native corporations entitlement for areas which really go to the State as navigable waters.

While it is probable that additional lands will be made available to native corporations under the provisions of Section 1410 of ANILCA we would feel much more comfortable if this bill made it clear that Congress intended that problem be addressed. After all, if the language of ANCSA had been a bit more precise on submerged lands we would not have been required to go to the time and expense to establish that which should have been obvious many years ago.

Another alternative would be to simply impose a one-year statute of limitations on the question of navigability of lakes or ponds of 50 acres or less - assuming the State did not file multitudes of law suits within that year - the problem would be muted with the passage of the year.

As with the issue of submerged lands, the issue of navigability is of much more importance in the Calista region than any other region because of the vast amounts of land covered by lakes, streams and ponds.

We have prepared language which will assure that the navigability question is solved quickly rather than allowed to drag on as the submerged lands issue has. I have attached a copy of the language to this testimony (attachment 2).

Mr. Chairman, largely because of factors which have occurred since the introduction of this legislation - the Gulkana River case - Calista has serious reservations about this legislation in its present form. With the changes we propose, we enthusiastically endorse it.

Attachment 1

On page 4, after line 20, insert the following:

(d)(1) Notwithstanding any other provision of law, a Regional Corporation is authorized to relinquish its selection, or if it has received conveyance, to convey its title, to the subsurface estate of any or all lands which it has selected or been conveyed under Section 901 (b) (1) above within the boundaries of a conservation system unit to the Federal Government. Subsurface estate relinquished or conveyed pursuant to this subsection shall be included as a portion of the conservation system unit in which it is located.

(2) Notwithstanding any other provision of law, the Secretary is authorized to withdraw, and a Regional Corporation may select and be conveyed, the subsurface estate of public land located outside a conservation system unit which is vacant, unappropriated and unreserved in an amount equal to the total number of acres of subsurface

estate which the Regional Corporation relinquishes or conveys pursuant to paragraph (1) of this subsection. Subsurface estate selected by and conveyed to a Regional Corporation pursuant to this paragraph shall be considered to have been selected and conveyed pursuant to the Alaska Native Claims Settlement Act and shall be subject to the provisions of the Act. Nothing in this subsection shall be construed to enlarge or diminish the right of the State to select and be conveyed public land pursuant to the Alaska Statehood Act.

Renumber the following Sections accordingly.

Attachment 2

"If at any time either before or after lands are patented to a Native or Native Corporation, title to submerged lands which have been charged against a Native or Native Corporation's entitlement is determined by a court of competent jurisdiction to be in the State of Alaska or other entity, then the Secretary shall make available to such Native or Native Corporation additional acreage equivalent to the acreage which was originally charged against the Native or Native Corporation. Such acreage shall be made available from existing selections, if any, or from any vacant, unreserved and unappropriated lands withdrawn by the Secretary for such purpose."

Senator MURKOWSKI. I have no questions, Mr. Meeds.

Mr. Refault.

STATEMENT OF WILLIAM C. REFFALT, DIRECTOR, NATIONAL WILDLIFE REFUGE PROGRAMS, THE WILDERNESS SOCIETY

Mr. REFFALT. Thank you, Mr. Chairman. I will try to be extremely brief.

My testimony inadvertently and wrongly says it is with regard to S. 576. That should be corrected to read regarding H.R. 2629. Since Title I of H.R. 2629 is identical with H.R. 576, it should be no problem.

Many statements have been made here about treatment of Alaska the same as all the other states. So I thought rather than trying to paraphrase my statement or whatever, I would focus on that for a moment.

The fact is that the meandering nature of the surveys, the decision to exclude those lands from conveyance under the typical Statehood Act, I think, does not in itself give any cause or reason for applying them in Alaska.

Alaska was essentially the only state in the union that was given not only an extraordinarily large grant, but was given the right to select those lands wherever they chose.

The rest of the states, upon entering the union, had to take the lands in place, Section 36. Later two additional sections were added for two states. And they had no choice as to what occurred on those lands.

And if the lands were unavailable to the state, either because they were covered with water or they were leased mineral lands, or if they had already been appropriated under some other provision of public land law, the state was given the right to select in lieu land somewhere else.

That is considerably different than the State of Alaska. And I believe is sufficient reason for considering an alternative approach to the lands in Alaska.

Also, it has been stated that there is nothing in the Statehood Act to prohibit the meandering of non-navigable bodies of water. I have not read the Statehood Act in some time, and it is not here in front of me.

But I do believe that the Statehood Act requires the Secretary of Interior to accept Alaska's state land selections in blocks no less than 5,760 acres, and to survey only the exterior boundaries. In my view that wording does preclude meandering.

There are similar provisions in the Alaska Native Claims Settlement Act on a smaller scale. Again, the Native Claims Act provided for 44 million acres, rather than 105 million acres.

But that is another magnitude or more of difference between those land selections, again selections, and public land entries under the homestead laws or some of the preemption acts. And therefore again the providing of a manual of survey technique does not necessarily have to apply.

I think that there is sufficient reason to differentiate and say, if you have got the right to go out and select on the lands and you have to select in large blocks, and you are extremely interested in cutting the costs of survey, and you are interested in rapid conveyance of the land with reasonable certainly of ownership, then you could reach the conclusion that I believe was reached in those two acts that said, just survey the exterior, count the acreage except navigable waters, and move along.

The solution that we have offered we believe is a better solution because it simply puts a definite mechanism into place with rapid certainty that the lands can be replaced, if they are lost under a navigability decision at any point in the future.

It only uses the public lands to the degree that is necessary so that the state gets its lands under the navigability criteria and the Statehood Act. But it does not simply give away a bunch of plans needlessly.

We believe it has something to offer all four parties in this arrangement. And we think it is worth at least giving it serious consideration. Thank you, Mr. Chairman.

[The prepared statement of Mr. Reffalt follows:]

THE WILDERNESS SOCIETY

STATEMENT OF WILLIAM C. REFFALT, REPRESENTING
THE WILDERNESS SOCIETY
BEFORE THE PUBLIC LANDS, RESERVED WATER AND RESOURCE
CONSERVATION SUBCOMMITTEE OF THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
REGARDING S. 576
OCTOBER 20, 1987

Mr. Chairman, I am Bill Reffalt, Director of National Wildlife Refuge Programs for The Wilderness Society. I appreciate this opportunity to present testimony on behalf of our 190,000 members regarding ~~S. 576,~~ a bill modifying the Alaska National Interest Lands Conservation Act (ANILCA, P.L. 96-487).
H.R. 2629

If enacted, this bill would convey a minimum of 1.8 million acres of uplands in Alaska to the State and to the Alaska Native Corporations. We are opposed to the passage of this measure because it would needlessly give away a substantial acreage of public lands and result in the loss of public use, enjoyment and other benefits from them.

Historical Background

In January, 1959, Alaska became a state and was granted the largest and most beneficial land grant ever made by the Congress -- the right to select, over a 25 year period, more than 104.5 million acres (an area bigger than California, or over three times the size of the State of Arkansas). In addition, Alaska was allowed to select known mineral lands thereby resulting in State ownership of Prudhoe and all adjacent oil and gas fields. Also, Alaska received all lands beneath inland navigable waters and the tidelands out to three miles along its 10,000 mile coastline.

The other states had followed a policy adopted in 1785 of receiving "lot No. 16, of every township..." (this was modified in 1848 by adding Section 36 and, for Utah and New Mexico another two Sections were added). Under that formulation, Alaska would have received an "in place" grant of about 42,027,500 acres. Nevada is the only other State to receive selection rights, but they gave up nearly one-half of the original statehood grant acreage in exchange for that right. Under the Nevada formulation Alaska would have received slightly over 21 million acres.

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(202) 842-3400

In 1971, another large and unique land grant was made within the State of Alaska -- the grant of about 44 million acres of selection rights to the Alaska Native Corporations established under the Alaska Native Claims Settlement Act (ANCSA). This grant was part of a settlement to extinguish aboriginal claims, to allow the statehood land selection process to proceed. ANCSA represented a major departure from the previous reservation policies in the "lower 48."

In implementing these large and complex land grants, the Department of the Interior (DOI) used policies or regulations to meet the special conditions in Alaska and the letter and spirit of the Acts themselves. For instance, in 1959 less than 900,000 acres of Alaska had been surveyed as required for clear title land transfer by the Federal Government. In those days, it was estimated that it would take 50-100 years and many millions of dollars to accomplish the surveys necessary for land transfer to the State. To help speed this process a provision had been included in the Statehood Act requiring selection of the lands in blocks of 5,760 acres and requiring DOI to survey only the exterior boundaries of those blocks. DOI interpreted those provisions (in relation to others) as a requirement to "charge" the State for all acres inside those blocks except lands beneath the Navigable waters. This policy remained in effect until 1983, when Secretary James Watt suddenly announced a decision to change the practice and no longer "charge" for the acres of land beneath lakes 50 acres or larger and streams 198 feet or wider. In essence, S. 576 ratifies the Watt policy change.

When the Native Claims Act passed in 1971, the potential costs and time delay required to complete land-transfer surveys on the selected lands were an issue. The Act attempted to handle those problems with provisions similar to the Statehood Act requirements. DOI was required to survey and monument the Native Corporation selections only on two mile intervals and to make no internal surveys except for townsites and villages. These provisions were viewed as similar to the Statehood Act by the DOI and from 1972 until the 1983 Watt decision, DOI "charged" all available acreage within these corporation selections except the lands areas beneath navigable waters.

ANILCA Provisions Intended to Resolve Issues

At the time the Alaska Lands Act was under debate (1977-80), it was recognized that the navigability question created a potential issue regarding Native Corporation lands. If the State challenged a finding of "non-navigability" used by DOI to convey Native lands and they were successful (i.e. the waters were found to be navigable by a court), the resulting transfer of those lands beneath such waters to the State would create a reduction in the Native entitlement under ANCSA. Section 901 of ANILCA was created to solve this potential problem. This section provides the Secretary of Interior with authority to insure that any lands lost to the Native Corporations can be replaced using withdrawals authorized in Section 1410 of the Act. Sec. 901 also established a time limit on the State for bringing navigability challenges. This was necessary to bring land ownership certainty within a "reasonable time".

The State participated in developing and agreed to the provisions of Section ~~901, as~~ did the attorneys representating the Native Corporations. If Section 901 had been faithfully implemented, there would be no issue before the Congress today. However, following the passage of ANILCA, the State refused to accept the time limits and took the issue to court. Thus, the original time passed without any attempt to implement the solution. Eventually, the State was "forced" to threaten to file up to 150 lawsuits just before the deadline in order to preserve its interests. Congress has passed two time extensions to protect all interests.

The Watt Solution is a Giveaway of the Public Interest

The 1983 decision by Secretary Watt to apply the Manual of Survey in Alaska and not to "charge" the acres beneath lakes 50 acres or larger and streams 198 feet or wider would give away at least 1.8 million acres of public lands (Based on our review of the latest estimates, we would expect the State acreage to be potentially much greater than the sampled estimates). This approach to the problem creates a windfall of additional lands, pure and simple. If the lands are taken by a subsequent court decision favoring a State claim of navigability, the Native Corporation that loses lands will have already received full acreage replacement. If the State challenges every lake greater than 50 acres and every stream greater than 198 feet wide and wins, the Corporations will still have already received full replacement.

The losers in this "solution" are the public land owners and users, both in Alaska and elsewhere, now and in the future. They immediately lose their access and use of the lands and they lose the rights to influence the decisions about resource protection and development.

A Better Solution

We believe there is a way to prevent the potential future loss of land grant entitlement by the Native Corporations, give the State time to fully evaluate its interests and make its challenges and not cost the American public 1.8 million acres. We believe it is important to assure that the Native Corporations receive the 44 million acres of their choice insofar as possible. The Wilderness Society, Sierra Club, and several other environmental organizations have developed an alternative approach that will ensure replacement of any future losses with lands that have been selected by the Native

Corporations in excess of their entitlement and gives the State whatever time it needs to complete its review of the water areas. The "Conservation Alternative" approach would use only the amount of public lands necessary to replace acreage actually lost to successful State challenges. Thus, we believe this approach contains benefits for each involved party and constitutes far better public policy.

Thank you Mr. Chairman, I would be happy to respond to questions.

Senator MURKOWSKI. Thank you very much. Mr. Hession, you may proceed.

STATEMENT OF JACK HESSION, ALASKA REPRESENTATIVE, SIERRA CLUB

Mr. HESSION. Thank you, Mr. Chairman. My name is Jack Hession, the Alaska Representative of the Sierra Club. I live in Anchorage.

With your permission I would like to submit my statement for the record and just summarize it.

Senator MURKOWSKI. Your entire statement will be entered into the record.

Mr. HESSION. We support Titles II and III of H.R. 2629, and assume that this hearing is devoted primarily to the submerged lands provision of the bill, Title I.

As you mentioned in your introductory remarks, Mr. Chairman, this is the third time in 19 months that we have all been up here testifying on this issue. But from our point of view, this is the first time in which the subcommittee has a sufficient body of facts on which to make an informed decision.

Those facts are found in a May 1, 1987 report by the Bureau of Land Management, a copy of which I would like to submit for the record.

Senator MURKOWSKI. It will be entered into the record.

Mr. HESSION. We are opposed to Title I, Mr. Chairman, because of the impact on the Federal lands.

As detailed in the Department of the Interior report in May, this bill would result in the permanent loss of 1.8 million acres of public lands.

They would be conveyed out of Federal ownership, and no matter what happened thereafter as between the Native Corporations and the state, the public would still no longer own those lands.

The breakdown goes as follows. Nearly 700,000 acres would come out of national wildlife refuges, 18,000 acres out of the national parks and preserves, and approximately 1.1 million acres out of the BLM lands.

We think the impact here is totally avoidable and unnecessary. And in a moment I will suggest an alternative way of handling this problem.

Meanwhile, let me briefly respond to the equal footing argument, or the equity argument, as posed by Mr. Katz earlier this afternoon.

That is based on a comparison between Alaska and the lower 48 states. And we think the comparison that has been made is somewhat misleading, in that the reference is always to how the other public land states make their land selections.

It is not to how the Manual of Survey applies to Indian lands in the lower 48. We looked into how it is applied to Indian lands. And the situation is not parallel.

When the manual is applied to an Indian reservation, and these large water bodies are segregated or meandered, it does not result in an expansion of that reservation.

Those reservation lands remain, whether submerged or dry, remain the property of the tribe, whereas this bill that we are considering here today would result in, as I mentioned earlier, approximately 1.1 million acres of additional public land being conveyed to the Alaska Native Corporations.

Their entitlement would be expanded. Therefore, the comparison breaks down as between Alaska Native Corporations and the lower 48 Indian peoples.

As for the State of Alaska selection as compared to the lower 48, the other public land states, as Mr. Reffalt has pointed out, the situation there is not the same either. Totally different.

I would say that if the State of Alaska is willing to convert its 105 million acres into the equivalent of two townships per available Federal township, then we would go for the Manual of Survey approach in a moment.

But as I think Mr. Reffalt has indicated in earlier hearings, that would reduce the state's entitlement substantially. Probably by four-fifths or so. So we do not see the state jumping at that opportunity. But that would truly provide equality of treatment, Mr. Chairman.

And the other major point here that this bill would avoid the massive litigation that the state has promised, I think in raising that issue now Mr. Katz may have been beating a dead horse.

That is no longer at issue. Everyone agrees that the statute of limitation should be repealed. There is no argument there, Mr. Chairman. And we wholeheartedly agree with the reasons cited by Mr. Katz.

Our alternative would avoid what we perceive as an unnecessary impact on the Federal lands by providing for replacement lands in the event the Native Corporations were to lose land to the State of Alaska.

The issue essentially boils down to whether you, this Congress, provide replacement lands in advance, 1.8 million acres in advance, to the Native Corporations on the supposition that they may lose some of these lands. Or whether you wait and see if the lands are actually lost, and then replace them.

We think the latter is a more common sense approach, avoids the unnecessary conveyance, immediate conveyance of 1.8 million acres out of Federal ownership, and at the same time protects the Native entitlement from a single acre loss.

There has been a lot of talk about fairness here. What about fairness to the American people who own the 1.8 million acres of public land? As I mentioned before, most of that will pass out of any kind of public ownership, Federal or state, and be private. It is gone.

If we can avoid that impact, it seems to me we ought to strive to do so. Our alternative is offered in that spirit, Mr. Chairman.

Beyond that, if time were available I would dearly like to discuss the implications of the Gulkana River decision. But I will only point out that it is only a decision at the District Court level.

It is under appeal by the Otner Regional Corporation, and the villagers of Gulkana. It is such an esoteric decision, according to the lawyers I have consulted that whether or not it stands is highly questionable at this time.

So I would strongly urge the subcommittee to avoid basing decisions on this very controversial and important matter on a District Court decision that may not stand the test of time. Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Hession follows:]

STATEMENT OF JACK HESSION

ALASKA REPRESENTATIVE, SIERRA CLUB

on

H.R. 2629 and S. 576

before the

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

WASHINGTON, D.C.

OCTOBER 20, 1987

Mr. Chairman and members of the Subcommittee, I am Jack Hession, Alaska Representative of the Sierra Club. The Sierra Club is a national environmental organization of 416,000 members, including chapters in nearly every state, including Alaska. We appreciate this opportunity to offer our views on this important public land issue.

My statement focuses on Title I of H.R. 2629, which deals with submerged lands conveyances. We support Titles II and III of the bill. However, as both are unrelated to submerged lands, we recommend that the Subcommittee consider them in separate legislation.

We strongly oppose Title I, and recommend an alternative way of improving the existing submerged lands conveyance procedures.

H.R. 2629 (and S. 576, the companion bill by Senator Murkowski) would amend the Alaska Lands Act in order to moot a pending lawsuit against 1983 regulations by former Interior Secretary James Watt that changed the way submerged lands are conveyed in Alaska. The suit, brought by the Wilderness Society and the Sierra club, contends that Watt's regulations are contrary to the submerged lands provision (Section 901) of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), and other laws.

In announcing his regulations to an Anchorage audience, the former Secretary said that he was awarding additional millions of acres of uplands to the State and Alaska Native corporations. Watt was noted for his efforts to dispose of the federal lands, and his regulations are a classic example of his quest for "privatization." A copy of relevant portions of his Anchorage speech is attached to this statement.

H.R. 2629 would ratify and expand Watt's regulations. The bill would convey federal land beneath certain large waterbodies but not count or "charge" the acreage against the land grants made by Congress pursuant to the Alaska Statehood Act and the Alaska Native Claims Settlement Act (ANCSA), respectively. By taking this submerged acreage free of charge, the State and the corporations can select other federal uplands to complete their grants, which are thereby increased by an amount equal to the acreage beneath the large waterbodies.

Prior to 1983, all state and Native land selections of federal land, whether submerged lands or uplands, were charged as required by the Alaska Statehood Act, the Alaska Native Claims Settlement Act (ANCSA), and ANILCA.

The Interior Department's Submerged Lands Report of May 1987

When the Subcommittee last addressed this issue, it had only rough estimates on the impact on the federal lands of the Watt regulations and now H.R. 2629. Former Secretary Watt refused to prepare an environmental impact statement or release any other information when he issued his regulations in 1983. And although we sought relevant data as part of our lawsuit, the district court denied a motion for discovery (recently reversed on appeal).

Finally, late last year the House Interior and Insular Affairs Committee ordered the Department to produce the relevant data. In May, the Department submitted its report.

With your permission, Mr.Chairman, I would like to submit a copy of the report for the record of this hearing. The report is a significant development in the legislative, legal, and administrative history of the submerged lands dispute because for the first time a factual basis exists for the Congress's consideration of this issue. The Department actually counted the amount of additional uplands that would go to the Native village corporations and through statistical sampling estimated the amount that would go to the Native regional corporations and the State.

Acreage Impact of the Watt Regulations and H.R. 2629

Under the Watt regulations and H.R. 2629, the Interior Department would not deduct from the State and Native land grants the acreage under lakes 50 acres or larger and rivers 198 feet or wider inside State and Native selection tracts. This would allow the two parties to select an equivalent amount of upland acreage to complete their entitlements.

For example, suppose the State selects a 1000 acre tract that includes a 200 acre lake, and the lake, like the vast majority of such lakes, has not been previously determined to be navigable or non-navigable by the BLM. H.R. 2629 would convey title to 1200 acres--800 acres in the tract, 200 acres under the lake, and 200 acres of additional uplands--but charge only 1000 acres against the Statehood land grant because the lake is larger than 50 acres. The net increase in the State's land grant would be 200 acres.

In conveying title to the submerged lands under the large waterbodies, the bill goes beyond the regulations, which do not convey the submerged lands. The regulations leave the submerged lands to be claimed by the adjacent upland owners (the State and the Native corporations) pursuant to the doctrine of riparian rights.

According to the report, an estimated 1.8 million acres of federal uplands would be conveyed to the State and the Native corporations if H.R. 2629 is adopted. Of this total, 700,000 acres would go to the State, and 1.1 million acres to the Native corporations. These would be new selections, over and above the 105 and 44 million acres granted by Congress in the Statehood Act and ANCSA, respectively.

Of the new Native corporation selections, 694,000 acres would be within the national wildlife refuges, about 18,000 in the national parks and preserves, and about 400,000 would be land now administered by the Bureau of Land Management. The State's 700,000 acres would all be from the BlM lands.

Creating new inholdings in the refuges and parks would mean the loss of federal management, pubic use and enjoyment would end, and the land management agencies would probably attempt to re-acquire, at considerable cost, key tracts necessary for sound management of the surrounding federal lands. If the new inholdings were devoted to developments incompatible with the purposes of the surrounding conservation system unit, the unit could be adversely affected.

Similarly, it makes no sense for Congress to dispose of over a million acres of BLM lands in Alaska, as the bill proposes. The BLM management units would be peppered with new inholdings, making management more difficult and costly. Much of the BLM lands are valuable for national conservation purposes, e.g., as potential units of the Wilderness System, and some may contain valuable energy and other mineral resources that could produce badly needed federal revenues, (assuming Congress changes the present revenue-sharing formula, as seems likely). As a land disposal measure, H.R. 2629 directly contradicts Congress's policy for the public lands under BLM jurisdiction, as set out in the Federal Land Policy and Management Act of 1976, that the public lands are to be retained in public ownership and managed in the national interest.

A rough assessment of the economic impact of the H.R. 2629 and the Watt regulations can be derived from the recent appraisals made by the Interior department of 891,000 acres of Native-owned land within several of Alaska's national wildlife refuges. The appraisals were made public this year, and thus were not available when this Subcommittee last addressed the submerged lands issue.

The appraisals were made in connection with the Department's proposed exchange of land in the coastal plain of the Arctic National Wildlife Refuge for the 891,000 acres. An average value of $605 per acre was assigned to the Native holdings in the other refuges.

H.R. 2629 would convey 694,000 acres to Native corporations in some of the same refuges and in the same general areas--the village and regional corporation withdrawals--as the 891,000 acres are located. Assuming an average per acre value of only $100--an acre of raw land in rural Alaska is worth a minimum of $50 under any federal appraisal--the 694,000 acres are worth $69 million. Add the 1.1 million acres of BLM lands at $50 per acre, and H.R. 2629 represents a transfer of well over $100 million, probably much more, to the State and Alaska Native corporations.

H.R. 2629's Rationale

One of the major arguments the proponents of H.R. 2629 make in support of their bid for nearly two million acres of federal land is that the bill would afford "equality of treatment" and "equity" for Alaska by applying the BLM's Manual of Survey Instructions (1973) to State and Native corporation selections in the same manner as the Manual is applied to federal land conveyances in the other states.

However, when we look at how the Manual is applied to Indian reservations in the other states and to federal land selected by other public land states, a more complicated picture emerges than the one suggested by the supporters of the bill. On the Indian reservations, for example, if a tribe requests that the Bureau of Land Management divide its reservation lands into township and section lines, the application of the Manual does not result in an expansion of the reservation's size by an amount equal to the acreage of the large waterbodies excluded from the survey.

But such an expansion is precisely the result the bill would have for the Alaska Native corporation selections if the Manual is applied as called for by H.R. 2629--an expansion of 1.1 million acres, according to the Interior Department's report.

As for land selections by the other public land states, the Manual is applied to their selections, i.e., they are not charged for acreage under the large waterbodies. But there is a good reason for this application that advocates of H.R. 2629 fail to mention. The other public land states were granted sections 16 and 36 of each available township, or 1280 acres per township (Arizona and Utah received two additional sections as well), and it makes sense to allow the exclusion of the lands beneath the large waterbodies in order to maximize the amount of uplands conveyed. Alaska, by contrast, was provided a massive grant of 105 million acres, which is larger than the entire State of California, that goes well beyond the selection of sections to encompass dozens of townships and millions of acres at a time. It is far and away the most generous grant to any state in the history of this nation.

Had Alaska been treated equally with the other states, i.e., given two or at most four sections per available township, it probably would have had its submerged land selections surveyed in the same manner as in the other states, in order to maximize the amount of uplands conveyed. But in the Alaska Statehood Act, Congress provided for the conveyance and charging of all federally owned submerged land within Alaska's selection tracts; the BLM's Manual did not apply in Alaska.

A second key argument of the bill's supporters is that the bill would insure the ANCSA grant of 44 million acres against shrinkage due to loss of submerged lands to the State. If the State or another party is able to prove in federal court that submerged lands conveyed to a Native corporation are under water that was navigable at the time of Statehood, the submerged lands are declared the property of the State.

Sec. 901 of ANILCA is designed to protect the ANCSA grant. It limits judicial challenges to within eight and ten years of the date of conveyance of submerged lands to Native corporations in order to guarantee that replacement lands would be available if needed, to bring finality to the Native land selection process, and certainty of ownership to Native landowners.

But the State of Alaska, after agreeing to these time limits, later sued to overturn them. Now as the deadlines approach, the State says it will file scores of lawsuits if necessary to preserve its opportunity to possibly seek ownership of submerged lands conveyed to the Native corporations.

H.R. 2629 would avoid the possibility of massive litigation by repealing the time limits of Sec. 901. This would give the State an unlimited amount of time for its review and potential lawsuits.

The bill would also provide for replacement lands in advance through the conveyance of the additional 1.1 million acres of uplands. Then if the State could prove it owned land under a large waterbody conveyed to a Native corporation, the corporation's ANCSA entitlement would not be reduced because additional upland acreage of an equivalent amount would already been conveyed.

Notice that the conveyance of the 1.1 million acres in advance results in a permanent loss of federal uplands; the federal government does not recover the uplands whatever the State decides to do, or however successful it may be in court. As a practical matter, the State is unlikely to challenge for ownership of all 1.1 million acres under the large waterbodies, nor is it likely to win every one of its lawsuits. Whatever the probable net increase in the ANCSA grant, the federal estate in Alaska suffers a 1.1 million acre reduction.

A third argument heard from the backers of H.R. 2629 is based on a recent federal court decision on the navigability of the Gulkana River in Alaska. The court dramatically revised the criteria for determining whether or not a river is navigable for title purposes. It held that if a river can be floated by as small a craft as a two-person kayak or canoe, the river is navigable and its bed owned by the State pursuant to the Submerged Lands Act.

According to the supporters of H.R. 2629, if the decision is upheld, and if it is applied to lakes as well as rivers, the result will be that virtually all large waterbodies in Alaska will be declared navigable. If so, then the land under large waterbodies inside the Native selections will be State owned, and the Native corporations will select federal uplands instead. Similarly, the large waterbodies inside state selections will be navigable, owned by the State pursuant to the Submerged lands Act, and the State will select other federal uplands to fulfill its Statehood grant. In short, the effect of the Gulkana decision, say the supporters of the bill, will be to reduce the acreage impact of the bill to virtually zero.

A similar argument is made with respect to the bill's conveyance of 700,000 acres of additional uplands to the State: under the Gulkana decision the State will select them eventually.

The argument based on the Gulkana decision is flawed. First, the Gulkana decision has been appealed by the Gulkana village corporation and the Ahtna regional corporation. If the plaintiffs win, the argument is irrelevant. Second, even assuming for the purposes of discussion that the decision is eventually upheld, it would apply only to rivers. The BLM in Alaska estimates that it would then result in only an additional 100,0000 acres of federal land going to the State via the Submerged Lands Act. The decision does not apply to lakes, which is where most of the submerged lands acreage is found.

Third, the argument overlooks the relationship between the result of the bill and the subsequent application of the Gulkana standard, again assuming the standard survives the appeal. For the Gulkana standard to reduce the acreage impact of the bill from 1.8 million acres to zero, the standard would first have to be extended to lakes as well as rivers, presumably via another lawsuit. Then the State would have to apply it to every large waterbody inside the Native selections, and prevail in every lawsuit. Again, such a sweeping and successful state effort is highly unlikely under any criteria, because the State will challenge for only those submerged lands in which it perceives a state interest. It has already indicated that it will sue for ownership of only a minority of Native-owned submerged lands. Thus even assuming the survival of the Gulkana criterion, the net acreage impact of the bill is likely to be substantial.

A suggested alternative

Our recommended alternative would modify Sec. 901 of ANILCA in two ways. First, it would repeal the time limit (statute of limitation) in order to give the State an unlimited amount of time in which to assert state ownership of submerged lands previously conveyed and charged to Native corporations.

Second, the alternative would establish a pool of replacement lands for use if a Native corporation lost its submerged lands to the State. Congress would direct the Secretary to extend existing withdrawals covering Native corporation "overselections," which are lands selected in excess of entitlement. A Native corporation losing submerged lands would immediately select an equivalent amount of land from the replacement land pool.

The amount of overselections the Secretary would retain would be equal to twice the amount of submerged lands charged against the Native corporation's entitlement. (A twice-the-amount formula is used in ANILCA for underselected corporations. The Secretary withdraws an amount equal to twice the deficiency, and the corporation selects half of the amount to complete its entitlement). There are a few village and regional corporations with no overselections. For these the Secretary would withdraw other federal lands as a replacement land bank.

Currently there are 21 million acres of overselections, according to the Interior Department. A pool of replacement lands established from some of these overselections would probably amount to less than three or four million acres.

In choosing which selections to keep on the books, the Secretary would be guided by the selection priorities of the Native corporations. In the event a corporation had to select replacement lands, it would choose from among its preferred overselections.

Although the replacement land pools would be withdrawn for an indefinite period, at some point the State would complete its review of waterbodies within the Native selections. Under our suggested alternative, the Governor would periodically notify the Secretary that the State had finished its review for a corporation, group of corporations, or Native region, that all judicial challenges had run their course, and that therefore there was no longer any need to maintain the replacement lands pool or pools. Within six months of the receipt of the Governor's notice, the Secretary would revoke the withdrawal. The Governor's notice would cut off any further judicial challenges to the non-navigability of waterbodies inside the Native selections.

Our suggested alternative has a number of advantages:

**Because it would not apply the Manual of Survey Instructions to Native and State land selections, it would avoid H.R. 2629's immediate and permanent loss of an additional 1.8 million acres of federal lands. Instead, the amount of federal land passing out of public ownership would be limited to just that amount necessary to replace submerged land losses, if any, that might be incurred by the Native corporations in the future, and to just that amount needed for in lieu upland selections by the State in the event it disproves BLM non-navigability findings for the submerged lands it has been conveyed.

**The replacement lands mechanism guarantees the ANCSA grant against reductions. Because any losses to the State would be immediately replaced, the ANCSA entitlement could not fall below the 44 million acre level.

**By repealing the existing time limits of Sec. 901, the alternative would remove the threat of massive and protracted litigation the State has promised in the absence of a repeal. The State would be able to undertake a more orderly review of the submerged lands inside the Native selections.

**By creating the replacement lands pool from existing overselections, new withdrawals of federal land would be largely avoided. Only in the case of the 17 underselected villages and the handful of regional corporations requiring replacement lands would there be a need for new withdrawals. For the most part these new withdrawals would probably be re-withdrawals of earlier ones made for Native selection purposes.

**While the replacement land pools were in place, they would serve to promote the health of the local subsistence economies, which is a goal of both ANCSA and ANILCA, because they would remain withdrawn from all uses incompatible with the maintenance of undeveloped habitats on which subsistence hunting, fishing, and gathering ultimately depend. They would supplement the Native-owned land already devoted to subsistence purposes.

In summary, the mechanism proposed by H.R. 2629 for resolving the submerged lands dispute would come at too high a cost to the National Interest and other federal lands of Alaska. We have suggested an alternative that meets the key objectives of all parties to this controversy: protecting the ANCSA grant from a net reduction; providing the State with as much time as it needs for its submerged lands reviews, and holding the possible future loss of federal lands to a minimum as the Native and State land selection process continues.

Thank you for the opportunity to appear here today.

A PORTION OF THE REMARKS BY SECRETARY WATT
TO THE ANCHORAGE CHAMBER OF COMMERCE
ANCHORAGE, ALASKA, AUGUST 22, 1983

THREE YEARS AGO ALASKA WAS SEETHING WITH HOSTILITY AGAINST AN OVERWHELMING FEDERAL BUREAUCRACY THAT SOUGHT TO DICTATE YOUR FUTURE. THE FEDERAL BUREAUCRACY IN WASHINGTON AT THAT TIME WAS OPERATING UNDER POLICIES THAT TREATED THE PEOPLE OF ALASKA AS A BAND OF IRRESPONSIBLE CRAZIES INCAPABLE OF MANAGING THEIR OWN LANDS AND THEIR OWN DESTINIES.

ONE OF MY EARLIEST ACTIONS WAS TO INVITE GOVERNOR HAMMOND AND ALASKA'S CONGRESSIONAL DELEGATION TO THE INTERIOR DEPARTMENT SO THAT WE COULD MAKE A NEW START. ON THAT DATE, MARCH 12, 1981 --"ALASKA DAY"--WE MADE A PLEDGE TO WORK TOGETHER TOWARD STEWARDSHIP OF RESOURCES THAT WOULD SERVE ALASKA AND ALASKANS, AMERICA AND AMERICANS.

SINCE THAT TIME, WE HAVE FULFILLED MOST OF THE PLEDGES THAT I MADE TO ALASKA ON BEHALF OF PRESIDENT REAGAN.

UNDER OUR GOOD NEIGHBOR POLICY, WE ELIMINATED ARBITRARY LAND WITHDRAWALS AND MANY OF THE TROUBLESOME REGULATIONS IMPOSED BY THE PREVIOUS ADMINISTRATION.

WE FOLLOWED THROUGH ON OUR COMMITMENT TO EXPEDITE THE LAND CONVEYANCES TO THE STATE AND NATIVE CORPORATIONS. BY OCTOBER 1, 1983, THE STATE WILL HAVE RECEIVED TENTATIVE APPROVAL FOR PATENT OR PATENT TO 77 MILLION ACRES OUT OF THE 104 MILLION ACRES PROMISED IN ALASKA'S STATEHOOD ACT. WHEN I CAME INTO OFFICE, THE STATE HAD RECEIVED ONLY A LITTLE OVER 48 MILLION ACRES.

NATIVE CORPORATIONS WILL HAVE RECEIVED CLOSE TO 28 MILLION ACRES AS OF OCTOBER 1, OUT OF 44 MILLION ACRES PROMISED IN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT. AT THE TIME I BECAME SECRETARY, THE NATIVE CORPORATIONS HAD ONLY A LITTLE OVER 17 MILLION ACRES.

WE ARE PROUD TO HAVE CONVEYED MORE LAND IN 2½ YEARS THAN ANY OF MY PREDECESSORS DID IN 4 OR 8 YEARS IN OFFICE.

WE ARE CONTINUING TO WORK DILIGENTLY TO CARRY THROUGH ON THIS AND OTHER PLEDGES WE MADE IN 1981 TO ALASKA.

TODAY, I AM ANNOUNCING ANOTHER MAJOR STEP IN THE PROCESS OF CORRECTING INEQUITIES IN PAST FEDERAL POLICIES GOVERNING ALASKA. I BELIEVE THIS REPRESENTS A SIGNIFICANT CHANGE IN THE POLICY OF THE DEPARTMENT OF THE INTERIOR.

WE WILL SEEK TO CHANGE THE DEPARTMENT OF THE INTERIOR REGULATIONS INVOLVING SUBMERGED LANDS SO THAT THE STATE OF ALASKA AND ALASKA NATIVE CORPORATIONS WILL BE TREATED THE SAME AS STATES IN THE LOWER 48 IN THE TRANSFER OF FEDERAL LANDS.

FURTHERMORE, WE ARE GOING TO ASK CONGRESS TO AMEND THE ALASKA LANDS ACT TO ELIMINATE DEADLINES FOR THE STATE OF ALASKA TO LEGALLY CONTEST FEDERAL DETERMINATIONS ON WHICH RIVERS AND LAKES ARE NON-NAVIGABLE. THIS WOULD REMOVE AN UNREASONABLE LIMITATION UPON THE STATE IN ITS EFFORTS TO PROTECT THE INTERESTS OF THE PEOPLE OF ALASKA.

GOVERNOR HAMMOND AND THE ALASKA CONGRESSIONAL DELEGATION BROUGHT THIS COMPLEX ISSUE TO MY ATTENTION AT THE ORIGINAL

"ALASKA DAY" IN 1981. NEGOTIATIONS BEGAN IN EARNEST BETWEEN THE DEPARTMENT AND THE STATE IN EARLY 1982 WITH THE HAMMOND ADMINISTRATION AND AT THE URGING OF THE CONGRESSIONAL DELEGATION. OUR EFFORTS HAVE COME TO A SUCCESSFUL CONCLUSION.

LET ME TRY TO STATE THIS PROBLEM BRIEFLY -- AND HOPE THAT I DON'T GET INTO WATER OVER MY HEAD.

UNDER DEPARTMENTAL REGULATIONS THAT EXISTED WHEN I CAME INTO OFFICE, ALL SUBMERGED LANDS UNDER NON-NAVIGABLE RIVERS OR LAKES CONVEYED TO THE STATE WAS CHARGED AGAINST ALASKA'S STATEHOOD LAND ENTITLEMENT. THE SAME RULES APPLIED TO THE NATIVE CORPORATIONS.

IN THE LOWER 48, HOWEVER, STATES AND OTHERS WHO SELECT FEDERAL LANDS ARE TREATED QUITE DIFFERENTLY. THEY ARE NOT CHARGED FOR LANDS LYING BENEATH LAKES IN EXCESS OF 50 ACRES IN SIZE OR LANDS UNDER RIVERS THAT ARE OVER 198 FEET WIDE. WE PROPOSE TO NOW TREAT ALASKA UNDER THE SAME RULES AS EVERYONE ELSE.

THIS MAY NOT SEEM LIKE A BIG THING, BUT BY TREATING ALASKA

THE SAME AS WE TREAT ARIZONA OR UTAH OR NEVADA, THE STATE OF ALASKA COULD GAIN BETWEEN 4 AND 6 MILLION ACRES OF USABLE LAND AND NATIVES COULD GAIN BETWEEN ONE AND TWO MILLION ACRES. MIND YOU, THAT'S NOT ACREAGE IN ADDITION TO THE 104 MILLION ACRES CONGRESS GRANTED....WHAT THAT MEANS IS THAT ABOUT 4 TO 6 MILLION ACRES OF THE LAND YOU RECEIVE WILL BE USABLE, UPLANDS, "HIGH, DRY AND NEAR-BY" AS THEY SAY RATHER THAN LANDS UNDER WATER AS WOULD BE THE CASE HAD WE NOT INSTITUTED THIS CHANGE IN CALCULATING ACREAGE.

AS THEY SAY IN WASHINGTON, D.C., IT DOESN'T TAKE MUCH -- A MILLION HERE AND A MILLION THERE -- AND THINGS BEGIN TO ADD UP.

BUT MOST IMPORTANTLY AND WHAT I THINK MAY ACTUALLY BE OF MORE SIGNIFICANCE THAN THE NUMBER OF ACRES INVOLVED IS THAT THIS CHANGE TERMINATES ANOTHER VESTIGE OF PAST FEDERAL POLICIES WHICH TREATED THE STATE OF ALASKA INEQUITABLY -- AS IF IT WERE STILL A TERRITORY AND NOT A SOVEREIGN STATE. AND ALTHOUGH 60% OF ALASKA WILL STILL REMAIN IN FEDERAL OWNERSHIP, THIS ACTION IS ONE MORE STEP TOWARD DIMINISHING FEDERAL CONTROL OVER YOUR LANDS AND LIVES.

THE SECOND ACTION WE ARE TAKING IS TO PROPOSE LEGISLATION THAT WOULD AMEND SECTION 901 OF THE ALASKA LANDS ACT WHICH IMPOSES A STATUTE OF LIMITATIONS ON THE STATE'S ABILITY TO CONTEST NON-NAVIGABILITY DETERMINATIONS MADE BY THE FEDERAL GOVERNMENT ON LANDS CONVEYED TO ALASKA NATIVE CORPORATIONS. ALASKA IS THE ONLY STATE WHICH SUFFERS SUCH A SPECIFIC LIMITATION.

THIS IS IMPORTANT BECAUSE WHEN A LAKE OR RIVER IS DECLARED NAVIGABLE BY THE FEDERAL GOVERNMENT, THE STATE AUTOMATICALLY ACQUIRES IT FREE OF CHARGE. STATE OWNERSHIP, OF COURSE, ENSURES PUBLIC CONTROL AND PUBLIC ACCESS.

WE WANT TO ELIMINATE THE STATUTE OF LIMITATIONS AND PROVIDE THE STATE WITH MORE FLEXIBILITY IN CHALLENGING FEDERAL DECISIONS ON NAVIGABILITY.

WHILE ON THE SUBJECT OF NAVIGABILITY, I WANT TO MENTION SOME OTHER POLICIES OF OURS INTENDED TO HELP THE STATE OF ALASKA.

-- WE ARE EMPLOYING LIBERAL NAVIGABILITY CRITERIA THROUGH

THE BUREAU OF LAND MANAGEMENT. THESE CRITERIA -- SPELLED OUT BY ONE OF OUR ADMINISTRATIVE APPEAL BOARDS -- ARE DESIGNED TO INCREASE THE NUMBER OF NAVIGABLE WATERWAYS WHICH ARE SO CRITICAL TO DEVELOPMENT OF RESOURCES AND TO INCREASED ACCESS IN ALASKA.

-- WE ALSO HAVE DRAFTED REGULATIONS TO IMPLEMENT TITLE XI OF THE ALASKA LANDS ACT ASSURING ACCESS VIA FLOAT PLANES AND MOTOR BOATS ALONG WATERWAYS ON THE FEDERAL LANDS IN ALASKA.

THERE ARE OTHER ACTIONS WE ARE TAKING TO MAKE LIFE MORE ENJOYABLE FOR ALASKANS.

WE ARE ACTIVELY SEEKING RECREATIONAL EASEMENTS ON PRIVATE LANDS IN ALASKA, ESPECIALLY ALONG IMPORTANT WATERWAYS. THE COURTS HAVE RULED THAT WE CANNOT RESERVE RECREATIONAL EASEMENTS WHEN WE PATENT LAND TO PRIVATE PARTIES, BUT WE HAVE USED OTHER APPROACHES TO ACQUIRE RECREATIONAL EASEMENTS IN THE PRINCE WILLIAM SOUND AND THE NORTH SLOPE AREAS. WE ARE SEEKING RECREATIONAL EASEMENTS ELSEWHERE, INCLUDING THE IMPORTANT BRISTOL BAY REGION.

WE ARE WORKING TO IMPROVE THE NATIONAL PARKS AND REFUGES

HERE IN ALASKA BOTH BECAUSE WE ARE GOOD STEWARDS OF NATURAL RESOURCES AND BECAUSE OF THE ECONOMIC IMPORTANCE OF THESE CONSERVATION AREAS TO THE STATE. NATIONAL PARKS IN ALASKA HOSTED 625,000 VISITORS LAST YEAR, A SIGNIFICANT FACTOR IN MAKING TOURISM ALASKA'S THIRD LARGEST INDUSTRY.

VISITORS TO DENALI NATIONAL PARK REPRESENTED ALMOST ONE-FIFTH OF THE STATE TOURIST VOLUME LAST YEAR. OUR PARK SERVICE ESTIMATES THIS TRAFFIC GENERATED MORE THAN $85 MILLION IN SALES.

BACK IN 1981, WE SIGNED A CONTRACT REQUIRING THE CONCESSIONER AT DENALI TO BUILD AND IMPROVE MORE THAN $2 MILLION WORTH OF VISITOR RELATED FACILITIES. THE FIRST OF THESE IMPROVEMENTS OPENED THIS SEASON, AND WE ARE EXCITED ABOUT THE FAVORABLE REACTION TO THE NEW AUDIOVISUAL CENTER.

BECAUSE DENALI IS SO IMPORTANT TO ALASKA'S TOURISM WE ARE LOOKING CLOSELY AT THE POSSIBILITY OF NEW DEVELOPMENT AT THE SOUTHERN BOUNDARY. THIS COULD EASE PRESSURE ON THE WILDLIFE RESOURCES IN THE NORTHERN PORTION OF THE PARK AND PROVIDE

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United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Alaska State Office
701 C Street, Box 13
Anchorage, Alaska 99513-0099

TAKE PRIDE IN AMERICA

2650.5 960

IN REPLY REFER TO

MAY 1 1987

Memorandum

To: Director (311), Room 3653

From: State Director, Alaska

Subject: Submerged Lands Review

In FY 1985, we began a review of Village Corporation conveyances and selections made under Sec. 12(a) and (b) of the Alaska Native Claims Settlement Act to determine if any of these corporations could not reach their entitlement because of the 1983 Submerged Lands Policy or for other reasons. We had planned to complete the review by the end of FY 1987.

Shortly after the beginning of FY 1987, we were directed by the House Committee on Interior and Insular Affairs to accelerate our review and also to estimate the effect of the 1983 Policy on State and Native Regional Corporation Entitlements. We had an original deadline of April 1, 1987 for the Village review and June 1, 1987 for the State and Regional Corporation estimates.

We have completed both projects and have prepared a series of documents which describe the procedures used and the results.

Enclosure 1 is a summary of the results of our review.

We estimate 693,462 acres of submerged lands within the State of Alaska entitlement of 104,525,000 acres.

We estimate 295,978 acres of submerged lands within ANCSA Regional Corporation entitlements of 18,733,578 acres.

We estimate 825,319 acres of submerged lands within ANCSA Village Corporation entitlements of 21,141,898 acres.

We estimate 71,881 acres of ANCSA Regional Corporation submerged lands within ANILCA created Conservation System Units (CSU's).

We estimate 641,157 acres of ANCSA Village Corporation submerged lands within CSU's.

Enclosure 2 is a listing of Village and Regional submerged lands in CSU's.

Enclosure 3 is a listing of underselected ANCSA Village Corporations. We found 17 of the 198 Villages affected by the 1983 policy to be underselected by a total of 132,004 acres. 69,792 of these acres are within CSU's.

Enclosure 4 is a narrative description of each underselected Village including the reason for underselection and associated problems.

Enclosure 5 is a description of the method used by BLM to estimate submerged land acreage.

Enclosure 6 is a description of the method used by the State of Alaska to estimate submerged lands acreage.

Enclosure 7 is a joint Federal-State comparison of the two studies.

Enclosure 8 is a summary of Village acres sampled.

Enclosure 9 is a listing of Village submerged lands in CSU's.

Enclosure 10 is information about State and Native Region entitlements and ratio of surveyed to unsurveyed townships sampled.

Enclosure 11 is a detailed listing of Village submerged lands.

We have briefed the State of Alaska, Alaska Federation of Natives and Calista Corporation and the Sierra Club Alaska representative on the procedures and the results and have furnished each of them a copy of the above enclosures.

We are prepared to brief Departmental and Congressional officials during the week of May 18, 1987.

Attachments 11

cc: Jack Hession, Sierra Club
Ron Swanson, DNR - Alaska
Larry Kimball, AFN

SUBMERGED LANDS SUMMARY

		STATE SUBMERGED LANDS			
TERRAIN TYPE	TOTAL ACRES SAMPLED	TOTAL SUBMERGED LANDS	RATIO SUBMERGED ACRES/TOTAL ACRES	ENTITLEMENT	SUBMERGED LANDS IN ENTITLEMENT
MOUNTAINOUS	1,167,973	4,167	0.003567720284	20,905,000	74,583
ROLLING	3,491,859	20,723	0.005934655131	62,715,000	372,192
FLAT	1,216,948	14,360	0.011800379305	20,905,000	246,687
STATE TOTAL	5,876,780	39,250		104,525,000	**693,462**
		NATIVE REGION SUBMERGED LANDS			
MOUNTAINOUS	466,480	1,882	0.004035457905	1,873,358	7,560
ROLLING	1,667,721	6,933	0.004157032311	9,366,789	38,938
FLAT	1,351,316	44,990	0.033293192971	7,493,431	249,480
REGION TOTAL	3,485,517	53,805		18,733,578	**295,978**
		VILLAGE SUBMERGED LANDS			
	28,133,300	1,151,559	0.040932240441	20,163,056	**825,319**
		TOTAL SUBMERGED LANDS			
TOTAL	37,495,597	1,244,614	0.033193611659	143,421,634	**1,814,759**
		VILLAGE SUBMERGED LANDS IN CSU'S			**641,157**
	Note: Submerged Lands In CSU'S are part of Village Submerged Lands				
		REGION SUBMERGED LANDS IN CSU'S			**71,881**
	Note: Submerged Lands In CSU'S are part of Native Region Submerged Lands				
		TOTAL SUBMERGED LANDS IN CSU'S			**713,038**

ENCLOSURE 1

SUBMERGED LANDS IN CSU'S

	CONSERVATION SYSTEM UNIT	VILLAGE SUBMERGED LANDS ACRES IN CSU'S	REGION SUBMERGED LANDS ACRES IN CSU'S	TOTAL
	VILLAGE AND REGIONAL LANDS IN CSU'S			
	NATIONAL WILDLIFE REFUGE SYSTEM			
	ALASKA MARITIME	7,840		7,840
	ALASKA PENINSULA	1,597		1,597
	ARCTIC	4,298		4,298
DOYON	INNOKO	1,157	7,657	8,314
DOYON	KANUTI	345	9,955	10,300
	KENAI	2,302		2,302
	KOBUK VALLEY	133		133
DOYON	KOYUKUK	6,785	9,189	15,974
DOYON	NOWITNA	17	1,531	1,548
NANA	SELAWIK	47,764	2,297	50,061
	TETLIN	2,932		2,932
	TOGIAK	4,345		4,345
	YUKON DELTA	488,479		488,479
DOYON	YUKON FLATS	56,646	39,053	95,699
TOTALS		624,641	69,682	694,323
	NATIONAL PARK SYSTEM			
	BERING LAND BRIDGE	7,516		7,516
	GATES OF THE ARCTIC	539		539
	LAKE CLARK	2,262		2,262
AHTNA	WRANGELL-ST. ELAIS	5,658	2,199	7,857
	YUKON CHARLEY	41		41
TOTALS		16,016	2,199	18,215
	NATIONAL FOREST SYSTEM			
	ADMIRALTY ISLAND	500		500
TOTAL VILLAGE AND REGIONS		641,157	71,881	713,038

ENCLOSURE 2

SUBMERGED LANDS

UNDERSELECTED VILLAGES

REGION	VILLAGE	ENTITLEMENT ACRES	SUBMERGED LANDS ACRES	UNDERSELECTED ACRES	CSU NAME
ALEUT	NELSON LAGOON	69,120	4,992	3,728	
	PAULOFF HARBOR	69,120	1,091	1,815	AK MARITIME
ASRC	ANAKTUVUK PASS	92,160	535	677	GATES OF ARCTIC
	ATKASOOK	69,120	12,421	10,950	
	KAKTOVIK	92,160	3,380	2,386	ANWR
	NUIQSUT	123,603	15,270	10,987	
	POINT HOPE	138,240	5,817	16,000	
	POINT LAY	87,535	4,583	6,151	
	WAINWRIGHT	159,825	9,407	3,137	
BERING STRAITS	KING ISLAND	124,800	4,162	680	
BRISTOL BAY	KOLIGANEK	96,070	1,116	959	
CALISTA	ANIAK	126,187	3,705	85	YUKON DELTA NWR
	BETHEL	237,095	30,651	33,458	YUKON DELTA NWR
	MEKORYUK	128,648	13,279	19,628	YUKON DELTA NWR
CHUGACH	ENGLISH BAY	76,400	240	9,620	
DOYON	HUSLIA	115,200	6,448	5,721	KOYUKUK NWR
NANA	SELAWIK	138,240	46,864	6,022	SELAWIK NWR
TOTALS	TOTALS	1,814,875	150,682	132,004	
				69,792 . UNDERSELECTED IN CSU'S	

ENCLOSURE 3

Underselected ANCSA Villages
Status April 13, 1987

ALEUT REGION

Nelson Lagoon

Nelson Lagoon Corporation, for the village of Nelson Lagoon, has a 69,120-acre statutory 12(a) entitlement. It is underselected by approximately 3,728 acres. This is the result of the village's selection application on six sections being erroneously removed from the Master Title Plat, and then the patenting of those sections to the State of Alaska.

As this was a BLM error our first course of action should be to try to recover the lands from the State. Should that fail Nelson Lagoon will be in the same situation as Pauloff Harbor - legislative authorization to select outside the Aleut Region may be required as all lands within the Region not selected by the Native corporations or the State of Alaska are within an ANILCA created refuge, and as such are not available for withdrawal.

Pauloff Harbor

Sanak Corporation, for the village of Pauloff Harbor, has a 69,120-acre statutory 12(a) entitlement. It is underselected by 1,815 acres. This is a result of the corporation not selecting enough acreage to fulfill its entitlement, and is not due to recalculation under the submerged lands regulation.

All of the lands in the Aleut Region which were previously withdrawn for Native selection and which were not validly selected by the Native corporations or the State of Alaska were included in any one of the three national wildlife refuges, Alaska Maritime NWR, Alaska Peninsula NWR, or Izembek NWR, by ANILCA; such lands are not available for withdrawal for selection by Sanak Corporation.

ARCTIC SLOPE REGION

Anaktuvuk Pass

Nunamiut Corporation, for the village of Anaktuvuk Pass, has a 92,160-acre statutory 12(a) entitlement.

The village is underselected by 677 acres partly due to submerged lands; and partly because they didn't overselect sufficiently to allow for variances when the unsurveyed lands become surveyed. Today the Gates of the Arctic National Park and Preserve and the Arctic Slope Regional conveyances totally surround the village lands.

Atkasook

The Atkasook Corporation, for the village of Atkasook, has a 69,120-acre statutory 12(a) entitlement. Of this, 68,652 acres have been conveyed. Since the conveyance document was issued the lands have been surveyed, and the conveyed acreage adjusted to survey is now 56,779, leaving a remaining entitlement of 12,341 acres. Atkasook has 1,391 acres of land still selected, making them 10,950 acres underselected.

The village of Atkasook is located entirely within the National Petroleum Reserve-Alaska. There is no bar to rewithdrawing lands within the original 11(a)(1) withdrawal within NPR-A for selection by the village corporation.

Kaktovik

Kaktovik Inupiat Corporation, for the village of Kaktovik, has a 92,160-acre statutory 12(a) entitlement. Of this approximately 85,168 acres of uplands has been conveyed. Because of the amount of submerged lands as well as the fact that numerous Native allotments were reinstated, the village may be underselected by as much as 4,200 acres. While it is possible not all Native allotments will be approved, we feel we must allow for that possibility at this time.

All surrounding lands are within the Arctic National Wildlife Refuge and therefore unavailable for withdrawal.

Nooiksut

Kuugpik Corporation, for the village of Nooiksut, has a 115,200-acre statutory 12(a) entitlement. As a result of our recalculation of acres under the submerged lands regulations, it is underselected by 3,079 acres.

Also, Section 11(a)(2) of ANCSA withdrew and allowed conveyance to village corporations lands which have been validly selected by, or tentatively approved (TA'd), but not yet patented, to the State of Alaska up to 69,120 acres. The total amount of lands which have been properly selected by or TA'd to, the State and conveyed to Kuugpik is 47,071 acres, leaving only 22,049 acres to be conveyed before the 69,120 acreage limitation is reached. Of the 29,856 acres remaining selected by Kuugpik, 25,586 acres are either valid State selections or TA'd lands. This means we will not be able to convey 3,537 acres of the remaining selection. This acreage added to what the corporation is already underselected will bring the total of underselection to 6,616 acres.

The only lands in the vicinity which can be made available for selection are within NPR-A.

Point Hope

Tigara Corporation, for the village of Point Hope, which has a 138,240-acre statutory 12(a) entitlement, may be underselected by approximately 16,000 acres. The possible underselection is not a result of our recalculation of acres under the submerged lands regulations. In 1974, nearly 100 Native Allotment applications were relinquished at the request of Tigara Corporation, which received title to the lands in 1977. In 1981 and 1982, at the request of the applicants, the Native allotments were reinstated and are pending adjudication. If any are determined valid, Tigara Corporation and Arctic Slope Regional Corporation will reconvey the surface and subsurface estates, respectively, of the lands involved to the United States in order for BLM to grant certificates for the Native allotments. The corporations will be credited the acres of lands reconveyed.

To resolve the problem of underselection, the Arctic Slope Regional Corporation has agreed to reconvey land to the United States for conveyance to the village corporation. Arctic Slope will be credited for the reconveyed acres.

Point Lay

Cully Corporation, for the village of Point Lay, has a 69,120-acre statutory 12(a) entitlement. Of this approximately 57,210 acres have been conveyed. Also they have an 18,415 acre reallocation under 12(b). Because of the submerged lands it has been determined that the village is overselected as to 12(b) by 2,000 acres but underselected as to 12(a) by 6,151.

Wainwright

Olgoonik Corporation, for the village of Wainwright has a 115,200-acre statutory 12(a) entitlement. Of this approximately 102,651 acres has been conveyed. Of the 44,625 acre 12(b) reallocation to the village, approximately 42,170 acres has been conveyed. Because of submerged lands the village of Wainwright is underselected by 3,137 acres as to their 12(a) entitlement. They are overselected by 11,000 acres under Sec. 12(b).

BERING STRAITS

King Island

King Island Native Corporation, for the village of King Island, has a 115,200-acre statutory Sec. 12(a) entitlement. Of this, approximately 90,821 acres have been conveyed. Of the 9,600-acre Sec. 12(b) reallocation to the village, no conveyance has been made.

The submerged lands review indicates that the village is somewhat over selected under Sec. 12(a). They did not select sufficient Sec. 12(b) acreage to fulfill their reallocation and are underselected by at least 680 acres.

BRISTOL BAY REGION

Koliganek

Koliganek Native Limited, for the village of Koliganek, has a 92,160-acre statutory 12(a) entitlement. The village requested that they receive some of their 12(b) entitlement from lands that were selected by 12(a) which BLM did per their request. By doing so the Native Village of Koliganek became underselected by 959 acres. The submerged lands was also a factor in their being underselected.

CALISTA REGION

Aniak

The Kuskokwim Corporation, for the village of Aniak, was reallocated 10,987 acres by Calista Corporation as authorized by Sec. 12(b) of ANCSA. The corporation's valid 12(b) selections total approximately 10,902 acres, leaving what appears to be an underselection of approximately 85 acres.

The underselection occurred partly because of the amount of submerged lands existing. In the 12(a) selected area there are approximately 3,705 acres of submerged lands. All of the 12(b) selected areas topfiled 12(a) selected area and while 12(a) was overselected there was insufficient acreage remaining to fulfill the 12(b) entitlement.

Since the lands remain unsurveyed this is, of course, an approximation. The survey may resolve the problem, or it could conceivably show the village to be even more underselected.

Bethel

Bethel Native Corporation, for the village of Bethel, was reallocated 75,815 acres by Calista Corporation as authorized by Sec. 12(b) of ANCSA. The corporation's valid 12(b) selections (after all 12(a) is conveyed) total approximately 42,357 acres, leaving an underselection of 33,458 acres. This figure could go up, if additional acres are reallocated to the corporation; Calista Corporation still has 3,542.93 acres of 12(b) which must be reallocated.

The underselection occurred partly because of the amount of submerged lands existing. In the 12(a) selected area (topfiled by Sec. 12(b) selections), there are approximately 13,601 acres of submerged lands and in the 12(b) selected area, 1,375 acres, which will not be charged against Bethel's entitlements.

It also occurred because Bethel Native Corporation did not select lands sufficient to fulfill its 12(b) entitlement.

There are no lands in the vicinity which could be made available for selection as they are included in the Yukon Delta National Wildlife Refuge created by ANILCA.

We have contacted the corporation and will be working with the land manager on this.

Mekoryuk

Nima Corp., for the village of Mekoryuk, on Nunivak Island, has a 115,200 - acre statutory 12(a) entitlement, and a 13,448 - acre 12(b) reallocation entitlement. It is underselected by approximately 19,628 acres, for its combined entitlements. The underselection is the amount of acreage in excess of the 69,120 acre 12(a) limitation for selection/conveyance from the National Wildlife Refuge system. Although lands were previously withdrawn pursuant to 11(a)(3), Nima Corp., originally failed to select enough lands to avoid underselection. Recalculation under the submerged lands regulations added substantially to the underselection.

Nima Corp's., remaining allocations are almost entirely within the former Nunivak National Wildlife Refuge on Nunivak Island and Clarence Rhode National Wildlife Refuge on the Yukon Delta, now both a part of the Yukon Delta National Wildlife Refuge. There are no lands on Nunivak island which could be made available for selection.

CHUGACH REGION

English Bay

The English Bay Corporation, for the village of English Bay, which has a 69,120-acre statutory 12(a) entitlement, is underselected by approximately 9,825 acres. This underselection is not a result of the recalculation of submerged lands. There are no lands in the vicinity which could be made available for selection, as they were included in the Kenai Fjords National Park created by ANILCA.

There are virtually no lands in the Chugach Region which could be made available to fulfill the village entitlement. We found only one township which meets the criteria set forth in Sec. 1410 of ANILCA, but the lands are covered by glaciers and would not seem suitable for withdrawal.

We have contacted a representative of Chugach Alaska Corporation who will review the situation with the village corporation.

DOYON REGION

Huslia

The K'oyitl'ots'ina Corporation, for the village of Huslia, has a 115,200 acre statutory 12(a) entitlement. As a result of our recalculation of acres under the submerged land regulations, it is underselected by 5,722 acres. The village of Huslia is located entirely within the Koyukuk National Wildlife Refuge.

NANA REGION

Selawik

NANA Regional Corporation, successor in interest to Akuliak, Incorporated, for the village of Selawik, which has a 138,240-acre statutory 12(a) entitlement, is underselected by approximately 6,022 acres. This underselection is a result of the recalculation of submerged lands. A total of 32,854 acres of submerged lands were identified within the 12(a) conveyed and selected lands.

There are no lands in the vicinity which could be made available for selection as they are included in the Selawik National Wildlife Refuge.

VILLAGE

SUBMERGED LANDS REVIEW

Deadline for review to
be reported to Bob
Arndorfer for April 1
report, March 15, 1987

SUBMERGED LANDS to be counted are nonnavigable water bodies 3 chains wide and wider (198 feet or wider, and shown as a double line on MTP) and lakes 50 acres and larger. If only a portion of a water body is within the selection or conveyance, that portion of the total acreage must be subtracted if the entire body of water meets the criteria for submerged lands. (Tidal and navigable waters are not counted as submerged lands.)

1. Order village case files.
2. Order protraction maps or plan of survey covering entire village selection.
3. Order MTP for each selected township.
4. Order township abstracts for all selected townships.
5. Outline entire selection on the protraction map or plan of survey as confirmed by village case file review of all village selection, relinquishments and rejections.
6. AALMRS abstracts will be confirmed/corrected in accordance with village selections, relinquishments and rejections.
7. On each township MTP outline all Sec. 12(a) selections in one color, all Sec. 12(b) selection in a second color. If Sec. 12(b) top files Sec. 12(a) on any sections this should be outlined with both colors.
8. Slash all lands conveyed to the village under Sec. 12(a) with the color assigned to the 12(a) selection, slash all lands conveyed to the village under Sec. 12(b) with the color assigned to 12(b). If lands were top filed (b over a) show which it is conveyed under by the proper color slash.
9. Attach legend to each MTP and fill out. Do not cover status on MTP. Legend numbers correspond to line numbers on chart.
10. Total up submerged lands in conveyed sections by township and enter acreage on legend on plat and in column 1 on chart. Do not count navigable or tidal water as submerged lands.
11. Total up submerged lands within remaining selected lands, enter, by township, acreage on legend on plat and in column 2 on chart. If any of the remaining selected lands are Sec. 12(b) or 12(a) top filed by 12(b), you must keep the submerged lands totals separate on your work plat for further calculations. However, one grand total should be shown in column 2.

12. Total up lands not available within conveyed lands; all Native allotments, inholdings, etc. Also total up lands not available within selected lands; all Native allotments, inholdings, etc. Enter grand total of acreage of lands not available by township, on legend on plat and in column 3 on the chart.

13. Total lands conveyed under Sec. 12(a) excluding all Native allotments, inholdings or submerged lands and enter, by township, acreage on legend on plat and in column 4 on the chart.

14. Total lands remaining selected only under Sec. 12(a) excluding all Native allotments, inholdings or submerged lands and enter, by township, acreage on legend on plat and in column 5 on the chart.

15. Total lands conveyed under Sec. 12(b) excluding all Native allotments, inholdings or submerged lands and enter, by township, acreage on legend on plat and in column 6 on the chart.

16. Total lands remaining selected only under Sec. 12(b) excluding all Native allotments, inholdings or submerged lands and enter, by township, acreage on legend on plat and in column 7 on the chart.

17. Total lands remaining selected under Sec. 12(a) and top filed under Sec 12(b) excluding all Native allotments, inholdings or submerged land and enter, by township, acreage on legend on plat and in column 8 on the chart.

18. Fill out forms with BLACK INK for better reproduction.

LIMITATIONS

Remember, lands validly selected by the State, or that are within an old refuge or forest could be conveyed to the village up to 69,120 acres. If any of the conveyed lands fall in either of these categories, the total acres involved MUST be entered, by township, on legend on plat and in column 9 on the chart followed by an S (valid State selection) R (refuge) or F (forest). If it falls in two categories, use a second line to enter the second figure. They can have 69,120 acres of valid State selected lands and 69,120 acres of forest. However, they must combine lands conveyed under Sec. 12(a) and Sec. 12(b) in arriving at the 69,120-acre limitation.

If any of the remaining selected lands fall within valid State selection, refuge or forest lands, the total acres must be entered, by township, on legend on plat and in column 10 on the chart.

It is important to identify the number of remaining selected acres which are Sec. 12(a) top filed by Sec. 12(b). This top filing creates a double count of remaining selected acres. Also, legislation may be passed that would allow an underselected village to substitute one selection category for the other. At this time, that is not possible.

We must assume that all Native allotments will be conveyed to allottees so it is not necessary to review their applications. Just look at the abstracts on the townships to make sure they are all plotted according to the latest land description.

Letters must be written to the corporations once we have completed the review. It would be preferable that this be done immediately, however, time is also important. Some spot checking should be done for accuracy but this is an estimate and possibly it could be considered final when the adjudicator completes the forms. Should it become clear that all letters cannot be sent timely, they must be sent as soon as the project is complete.

UPDATE OF AALMRS

Abstracts will be confirmed/corrected in accordance with village selections, relinquishments, and rejections. At this time we will not attempt to update the upland conveyed acres. That will be done at a later date, probably during the review for confirming patent.

SUBMERGED LANDS IN CSU'S

			SUBMERGED LANDS STATUS APRIL 29, 1987						
				VILLAGE SUBMERGED LANDS IN CSU'S					
REGION	VILLAGE	12(a)&(b)	12(a)&(b)	TOTAL	SUBMERGED	L/W	ENTITLEMENT	SUBMERGED	CSU NAME
		CONVEYANCE	SELECTION	SAMPLE	LANDS	RATIO	ACRES IN	LANDS ACRES	
AHTNA				ACRES	ACRES		CSU'S	IN CSU'S	
	COPPER CENTER	106,076	35,249	141,325	740	0.005236	57,600	302	50% WR/ST. ELIAS
	GAKONA	60,055	59,250	119,305	4,860	0.040736	34,560	1,408	50% WR/ST. ELIAS
	GULKANA	76,157	169,386	245,543	4,736	0.019288	46,080	889	50% WR/ST. ELIAS
	CHISTOCHINA	63,115	20,211	83,326	3,880	0.046564	48,384	2,253	70% WR/ST. ELIAS
	CHITINA	105,585	47,548	153,133	1,340	0.008751	92,160	806	80% WR/ST. ELIAS
TOTAL	5	410,988	331,644	742,632	15,556	0.020947	278,784	5,658	
ALEUT									
	AKUTAN	89,408	0	89,408	520	0.005816	92,160	536	AK MARITIME
	ATKA	88,814	0	88,814	417	0.004695	92,160	433	AK MARITIME
	BELKOSKI	67,311	0	67,311	15	0.000223	69,120	15	AK MARITIME
	FALSE PASS	66,957	0	66,957	453	0.006766	69,120	468	AK MARITIME
	KING COVE	108,864	0	108,864	815	0.007486	115,200	862	AK MARITIME
	NIKOLSKI	61,588	0	61,588	1,615	0.026223	69,120	1,813	AK MARITIME
	PAULOFF HARBOR	64,605	0	64,605	1,091	0.016887	69,120	1,167	AK MARITIME
	SAND POINT	130,540	0	130,540	1,665	0.012755	138,240	1,763	AK MARITIME
	UNALASKA	109,783	0	109,783	548	0.004992	115,200	575	AK MARITIME
	UNGA	61,602	0	61,602	185	0.003003	69,120	208	AK MARITIME
TOTAL	10	849,472	0	849,472	7,324	0.008622	898,560	7,840	
ASRC									
	KAKTOVIK	85,169	4,885	90,054	4,200	0.046639	92,160	4,298	ANWR
	ANAKTUVUK PAS	88,936	2,547	91,483	535	0.005848	92,160	539	GATES OF ARCTIC
TOTAL	2	174,105	7,432	181,537	4,735	0.026083	184,320	4,837	
BERING									
STRAITS	STEBBINS	81,844	94,474	176,318	1,388	0.007872	75,648	596	60% YUKON D NWR
	SHISHMAREF	99,682	91,846	191,528	11,535	0.060226	124,800	7,516	BERING LAND BR.
TOTAL	2	181,526	186,320	367,846	12,923	0.035132	200,448	8,112	
									ENCLOSURE 9

Page 1

SUBMERGED LANDS IN CSU'S

REGION	VILLAGE	12(a)&(b) CONVEYANCE	12(a)&(b) SELECTION	TOTAL SAMPLE ACRES	SUBMERGED LANDS ACRES	L/W RATIO	ENTITLEMENT ACRES IN CSU'S	SUBMERGED LANDS ACRES IN CSU'S	CSU NAME
BRISTOL									
BAY	NONDALTON	108,395	115,397	223,792	6,661	0.029764	75,990	2,262	60% LAKE CLARK NP
	CHIGNIK	110,358	21,492	131,850	615	0.004664	119,086	555	AK PEN NWR
	CHIGNIK LAGOON	89,129	19,084	108,213	0	0	95,466	0	AK PEN NWR
	CHIGNIK LAKE	89,803	23,355	113,158	905	0.007998	99,961	799	AK PEN NWR
	IVANOF BAY	79,036	10,342	89,378	0	0	81,532	0	AK PEN NWR
	PERRYVILLE	87,505	42,262	129,767	335	0.002582	93,926	242	AK PEN NWR
	MANOKOTAK	107,243	33,272	140,515	790	0.005622	125,620	706	TOGIAK NWR
	TOGIAK	147,157	19,756	166,913	1,150	0.00689	157,493	1,085	TOGIAK NWR
	TWIN HILLS	67,133	29,415	96,548	3,525	0.03651	69,950	2,554	TOGIAK NWR
TOTAL	9	885,758	314,375	1,200,133	13,981	0.01165	919,024	8,204	
CALISTA									
	MARSHALL	102,295	35,162	137,457	7,811	0.056825	49,842	2,832	40% YUKON DELTA NWR
	OHOGAMIUT	66,450	27,847	94,297	4,655	0.049365	35,110	1,733	50% YUKON DELTA NWR
	RUSSION MISS (Y	79,170	57,783	136,953	375	0.002738	48,871	134	50%YUKON DELTA NWR
	ANIAK	101,751	24,351	126,102	3,705	0.029381	75,712	2,224	60% YUKON DELTA NWR
	AKIACHAK	90,924	48,612	139,536	22,213	0.159192	129,791	20,662	YUKON DELTA NWR
	AKIAK	98,821	40,958	139,779	7,440	0.053227	124,473	6,625	YUKON DELTA NWR
	ALAKANUK	119,522	62,176	181,698	11,719	0.064497	158,765	10,240	YUKON DELTA NWR
	ANDREAFSKY	58,308	27,908	86,216	4,155	0.048193	72,811	3,509	YUKON DELTA NWR
	ATMAUTLAUK	83,017	58,571	141,588	420	0.002966	97,434	289	YUKON DELTA NWR
	BETHEL	123,301	80,336	203,637	30,651	0.150518	237,095	35,687	YUKON DELTA NWR
	BILL MOORE'S SL	57,043	36,299	93,342	10,158	0.108826	71,141	7,742	YUKON DELTA NWR
	CHEFORNAK	75,054	58,294	133,348	13,353	0.100136	99,280	9,942	YUKON DELTA NWR
	CHEVAK	113,963	65,111	179,074	15,216	0.08497	156,831	13,326	YUKON DELTA NWR
	CHULOONAWICK	61,463	37,496	98,959	1,150	0.011621	70,306	817	YUKON DELTA NWR
	EEK	87,363	35,559	122,922	20,632	0.167846	123,990	20,811	YUKON DELTA NWR
	EMMONAK	117,578	44,972	162,550	5,165	0.031775	159,248	5,060	YUKON DELTA NWR
	HAMILTON	64,137	20,439	84,576	3,870	0.045758	70,658	3,233	YUKON DELTA NWR
	HOOPER BAY	128,991	110,586	239,577	16,316	0.068103	188,661	12,848	YUKON DELTA NWR
	KALSKAG	79,547	55,932	135,479	2,318	0.01711	99,148	1,696	YUKON DELTA NWR
									ENCLOSURE 9

SUBMERGED LANDS IN CSU'S

REGION	VILLAGE	12(a)&(b)	12(a)&(b)	TOTAL	SUBMERGED	L/W	ENTITLEMENT	SUBMERGED	CSU NAME
		CONVEYANCE	SELECTION	SAMPLE	LANDS	RATIO	ACRES IN	LANDS ACRES	
				ACRES	ACRES		CSU'S	IN CSU'S	
	KASIGLUK	80,140	61,959	142,099	32,261	0.227032	128780	29,237	YUKON DELTA NWR
	KIPNUK	87,591	64,540	152.131	33,502	0.220218	130978	28,844	YUKON DELTA NWR
	KOTLIK	95,778	48,811	144,589	3,513	0.024296	124869	3,034	YUKON DELTA NWR
	KONGIGANEK	95,270	70,090	165,360	11,580	0.070029	126099	8,831	YUKON DELTA NWR
	KWETHLUK	124,788	39,377	164,165	8,127	0.049505	158017	7,823	YUKON DELTA NWR
	KWIGILLINGOK	73,789	84,993	158,782	48,555	0.305797	125264	38,305	YUKON DELTA NWR
	LIME VILLAGE	59,414	74,089	133,503	1,563	0.011708	70262	823	YUKON DELTA NWR
	LOWER KALSKAG	79,882	29,256	109,138	5,483	0.050239	99543	5,001	YUKON DELTA NWR
	MEKORYUK	93,167	49,757	142,924	13,279	0.09291	128,648	11,953	YUKON DELTA NWR
	MOUNTAIN VILLA	111,743	59,398	171,141	18,285	0.106842	159,688	17,061	YUKON DELTA NWR
	NAPAKIAK	84,699	79,593	164,292	14,751	0.089785	126,627	11,369	YUKON DELTA NWR
	NAPASKIAK	82,690	70,375	153,065	32,108	0.209767	124,781	26,175	YUKON DELTA NWR
	NEWTOK	72,092	51,891	123,983	16,166	0.130389	97,697	12,739	YUKON DELTA NWR
	NIGHTMUTE	60,524	52,012	112,536	4,895	0.043497	73,471	3,196	YUKON DELTA NWR
	NUNAPITCHUK	94,074	65,763	159,837	42,794	0.267735	129,484	34,667	YUKON DELTA NWR
	OSCARVILLE	54,328	45,845	100,173	12,398	0.123766	71,449	8,843	YUKON DELTA NWR
	PIAMIUT	59,816	36,107	95,923	5,406	0.056358	70,219	3,957	YUKON DELTA NWR
	PILOT STATION	97,844	36,615	134,459	10,148	0.075473	129,352	9,763	YUKON DELTA NWR
	PITKA'S POINT	62,350	36,121	98,471	4,128	0.041921	73,031	3,062	YUKON DELTA NWR
	PLATINUM	59,350	30,194	89,544	927	0.010352	72,108	746	YUKON DELTA NWR
	QUINHAGAK	99,209	51,269	150,478	5,765	0.038311	130,407	4,996	YUKON DELTA NWR
	RUSSIAN MISSIOI	80,921	43,781	124,702	1,230	0.009864	97,170	958	YUKON DELTA NWR
	ST. MARY'S	107,541	40,927	148,468	3,258	0.021944	128,253	2,814	YUKON DELTA NWR
	SCAMMON BAY	84,070	25,695	109,765	1,065	0.009703	100,598	976	YUKON DELTA NWR
	SHELDON'S POINT	78,990	50,891	129,881	4,075	0.031375	97,917	3,072	YUKON DELTA NWR
	TOKSOOK BAY	100,076	63,811	163,887	10,807	0.065942	127,506	8,408	YUKON DELTA NWR
	TULUKSAK	80,785	34,207	114,992	5,856	0.050925	100,203	5,103	YUKON DELTA NWR
	TUNTUTULIAK	89,338	55,147	144,485	9,307	0.064415	124,473	8,018	YUKON DELTA NWR
	TUNUNAK	101,495	47,870	149,365	30,633	0.205088	128,209	26,294	YUKON DELTA NWR
	UMKUMIUTE	63,105	34,273	97,378	3,330	0.034197	70,306	2,404	YUKON DELTA NWR
TOTAL	49	4,223,558	2,463,049	6,686,607	576,517	0.08622	5,394,575	487,883	
									ENCLOSURE 3

SUBMERGED LANDS IN CSU'S

REGION	VILLAGE	12(a)&(b) CONVEYANCE	12(a)&(b) SELECTION	TOTAL SAMPLE ACRES	SUBMERGED LANDS ACRES	L/W RATIO	ENTITLEMENT ACRES IN CSU'S	SUBMERGED LANDS ACRES IN CSU'S	CSU NAME
CIRI									
	TYONEK 12(a)	69,554	29,119	98,673	1,540	0.015607	115,200	1,798	KENAI NWR
	SALAMATOF 12(	76,229	624	76,853	560	0.007287	69,120	504	KENIA NWR
TOTAL	2	145,782	29,743	175,525	2,100	0.011964	184,320	2,302	
DOYON									
	RUBY	108,385	39,970	148,355	219	0.001476	11,520	17	10% NOWITNA NWR
	EAGLE	83,044	20,203	103,247	460	0.004455	9,216	41	10% YUKON CHARLEY NP
	GRAYLING	83,700	13,929	97,629	458	0.004691	18,432	86	20% INNOKO NWR
	KALTAG	106,470	23,938	130,408	1,132	0.00868	23,040	200	20% INNOKO NWR
	KOYUKUK	85,853	18,290	104,143	2,560	0.024582	18,452	453	20% INNOKO NWR
	GALENA	108,327	33,368	141,695	1,659	0.011708	23,040	270	20% INNOKO NWR
	CIRCLE	102,143	191,934	294,077	1,368	0.004652	23,196	108	20% YUKON FLATS NWR
	NULATO	107,360	21,228	128,588	330	0.002566	57,671	148	50% INNOKO NWR
	ALLAKAKET	86,923	15,813	102,736	770	0.007495	46,080	345	50% KANUTI NWR
	NORTHWAY	107,580	11,158	118,738	6,045	0.05091	57,600	2,932	50% TETLIN NWR
	HUSLIA	94,819	14,659	109,478	6,448	0.058898	115,200	6,785	KOYUKUK NWR
	BEAVER	121,214	178,973	300,187	23,411	0.077988	136,725	10,663	YUKON FL NWR
	BIRCH CREEK	98,429	110,169	208,598	16,301	0.078146	132,602	10,362	YUKON FL NWR
	CHALKYITSIK	50,616	32,174	82,790	13,259	0.160152	91,790	14,700	YUKON FL NWR
	FORT YUKON	176,322	108,850	285,172	17,645	0.061875	214,479	13,271	YUKON FL NWR
	STEVENS VILLAGE	89,398	141,750	231,148	15,595	0.067468	111,777	7,541	YUKON FL NWR
TOTAL	16	1,610,583	976,406	2,586,969	107,660	0.041616	1,030,800	67,924	
NANA									
	AMBLER	86,796	16,051	102,847	1,485	0.014439	9,216	133	10% KOBUK VALLEY NWR
	KIANA	102,971	283,819	386,790	4,058	0.010491	28,800	302	25% SELAWIK NWR
	NOORVIK	104,856	35,591	140,447	29,472	0.209844	124,416	26,108	90% SELAWIK NWR
	SELAWIK	93,884	209,505	303,389	46,864	0.154468	138,240	21,354	SELAWIK NWR
TOTAL	4	388,507	544,966	933,473	81,879	0.087714	300,672	47,897	
									ENCLOSURE 9

SUBMERGED LANDS IN CSU'S

REGION	VILLAGE	12(a)&(b) CONVEYANCE	12(a)&(b) SELECTION	TOTAL SAMPLE ACRES	SUBMERGED LANDS ACRES	L/W RATIO	ENTITLEMENT ACRES IN CSU'S	SUBMERGED LANDS ACRES IN CSU'S	CSU NAME
SEALASKA									
	ANGOON	12,689	92,000	104,689	500		23,040	500	ADMIRALTY I NM
TOTAL	1	12,689	92,000	104,689	500		23,040	500	
TOTALS	**100**	**8,882,968**	**4,945,935**	**13,828,903**	**823,175**	**0**	**9,474,543**	**641,157**	**0**

Note: 16 Villages in Koniag Region not included since Sec. 1410 of ANILCA does not apply.

Entitlement acres may not include 12(b) if no reallocation has been made

ENCLOSURE 9

STATE & REGIONAL SUB LAND

STATE SUBMERGED LANDS

TERRAIN TYPE	% OF ENTITLEMENT	ENTITLEMENT	SAMPLE SIZE	ACRES IN SAMPLE	ACRES SUBMERGED LANDS IN SAMPLE
MOUNTAINOUS	20	20,905,000	55	1,167,973	4,167
ROLLING	60	62,715,000	163	3,491,859	20,723
FLAT	20	20,905,000	57	1,216,948	14,360
TOTALS	100	104,525,000	275	5,876,780	39,250

NATIVE REGION SUBMERGED LANDS

TERRAIN TYPE	% OF ENTITLEMENT	ENTITLEMENT	SAMPLE SIZE TOWNSHIPS	ACRES IN SAMPLE	ACRES SUBMERGED LANDS IN SAMPLE
MOUNTAINOUS	10	1,873,358	23	466,480	1,882
ROLLING	50	9,366,789	81	1,667,721	6,933
FLAT	40	7,493,431	65	1,351,316	44,990
TOTALS	100	18,733,578	169	3,485,517	53,805

ENCLOSURE 10

STATE & REGIONAL SUB LAND

	REGIONAL ENTITLEMENTS			
REGION	12(c)ENTITLEMENT	12(a)(1) IN LIEU ENTITLEMENT	14(h)(8) ENTITLEMENT	TOTAL
AHTNA	992,031	0	17,313	1,009,344
ALEUT	0	146,798	53,383	200,181
ASRC	4,011,729	460,800	62,119	4,534,648
BERING STRAITS	0	0	109,895	109,895
BRISTOL BAY	0	0	87,754	87,754
CALISTA	0	709,995	213,533	923,528
CHUGACH	338,665	0	33,450	372,115
CIRI	1,324,473	94,901	82,843	1,502,217
DOYON	8,356,572	0	146,824	8,503,396
KONIAG	0	345,662	53,407	399,069
NANA	746,131	0	78,050	824,180
SEALASKA	0	0	267,250	267,250
TOTALS	**15,769,600**	**1,758,156**	**1,205,822**	**18,733,578**

Note: Final 14(h)(8) entitlements have not been calculated. Final allocations will be made after all other Sec. 14(h) entitlements have been satisfied.

ENCLOSURE 10

VILLAGES IN PRE ANCSA REFUGES AND NPR-A

REGION	VILLAGE	ENTITLEMENT ACRES	
AHTNA	NONE	0	
ALEUT	ATKA	65,323	ALEUTIAN I NWR
	FALSE PASS	66,090	ALEUTIAN I NWR
	KING COVE	14,885	IZEMBEK NWR
ASRC	ATKASOOK	69,120	NPR-A
	BARROW	161,280	NPR-A
	KAKTOVIK	69,120	ARCTIC NWR
	NUIQSUT	46,080	NPR-A
	WAINWRIGHT	115,200	NPR-A
BERING STRAITS	NONE	0	
BRISTOL BAY	NONE	0	
CALISTA	BILL MOORE'S SLOUGH	1,770	CLARENCE RHODE NWR
	CHEFORNAK	48,034	CLARENCE RHODE NWR
	CHEVAK	66,515	CLARENCE RHODE NWR
	CHULOONAWICK	11,246	CLARENCE RHODE NWR
	HAMILTON	6,290	CLARENCE RHODE NWR
	HOOPER BAY	69,120	CLARENCE RHODE NWR
	KIPNUK	579	CLARENCE RHODE NWR
	KOTLIK	50,478	CLARENCE RHODE NWR
	MEKORYUK	69,120	NUNIVAK NWR
	NEWTOK	67,455	CLARENCE RHODE NWR
	NIGHTMUTE	60,531	CLARENCE RHODE NWR
	PIAMIUT	69,120	CLARENCE RHODE NWR
	PLATINUM	28,470	CAPE NEWENHAM NWR
	SCAMMON BAY	3,487	CLARENCE RHODE NWR
	TOKSOOK BAY	69,120	CLARENCE RHODE NWR
	TUNUNAK	60,147	CLARENCE RHODE NWR
	UMKUMIUTE	28,513	CLARENCE RHODE NWR
CHUGACH	NONE	0	

ENCLOSURE 10

STATE & REGIONAL SUB LAND

VILLAGES IN PRE ANCSA REFUGES AND NPR-A

REGION	VILLAGE	ENTITLEMENT ACRES	
CIRI	SALAMATOF 12(a)	57,480	KENAI NWR
	PT. POSSESSION GROUP	4,481	KENAI NWR
	TYONEK 12(a)	32,940	KENAI NWR
DOYON	NONE	0	
KONIAG	AKHIOK	69,120	KODIAK NWR
	KAGUYAK	66,796	KODIAK NWR
	KARLUK	56,739	KODIAK NWR
	LARSEN BAY	69,120	KODIAK NWR
	OLD HARBOR	35,722	KODIAK NWR
	KONIAG 1427(g)(3)	48,165	
NANA	NONE	0	
SEALASKA	NONE	0	
TOTAL		**1,758,156**	

ENCLOSURE 10

STATE & REGIONAL SUB LAND

		STATE SUBMERGED LANDS				
TERRAIN TYPE	% OF ENTITLEMENT	SAMPLE SIZE	ACRES IN SAMPLE	**SURVEYED TOWNSHIPS**	UNSURVEYED TOWNSHIPS	**RATIO SURV/ TOTAL TWPS**
MOUNTAINOUS	20	55	1,167,973	**16**	39	**0.29**
ROLLING	60	163	3,491,859	**72**	91	**0.44**
FLAT	20	57	1,216,948	**34**	23	**0.60**
TOTALS	100	275	5,876,780	**122**	153	**0.44**
		NATIVE REGION SUBMERGED LANDS				
TERRAIN TYPE	% OF ENTITLEMENT	SAMPLE SIZE TOWNSHIPS	ACRES IN SAMPLE	**SURVEYED TOWNSHIPS**	UNSURVEYED TOWNSHIPS	**RATIO SURV/ TOTAL TWPS**
MOUNTAINOUS	10	23	466,480	**7**	16	**0.30**
ROLLING	50	81	1,667,721	**30**	51	**0.37**
FLAT	40	65	1,351,316	**31**	34	**0.48**
TOTALS	100	169	3,485,517	**68**	101	**0.40**
TOTAL STATE AND NATIVE REGION		444	9,362,297	**190**	254	**0.43**
						ENCLOSURE 10

VILLAGE SUBMERGED LANDS

				SUBMERGED LANDS STATUS APRIL 29, 1987				
				VILLAGE SUBMERGED LANDS				
REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
AHTNA								
	CANTWELL	76,415	19,539	95,954	875	0.00911898	69,120	630
	CHISTOCHINA	67,465	15,861	83,326	3,880	0.04656425	69,120	3,219
	CHITINA	135,902	17,231	153,133	1,340	0.00875059	115,200	1,008
	COPPER CENTER	118,590	22,735	141,325	740	0.00523614	115,200	603
	GAKONA	77,004	42,301	119,305	4,860	0.04073608	69,120	2,816
	GULKANA	129,020	116,523	245,543	4,736	0.01928785	92,160	1,778
	MENTASTA LAKE	101,267	5,760	107,027	1,150	0.01074495	69,120	743
	TAZLINA	103,273	11,962	115,235	1,165	0.01010975	92,160	932
TOTAL	8.00	808,936	251,912	1,060,848	18,746	0.01767078	691,200	12,214
ALEUT								
	AKUTAN	95,021	0	95,021	520	0.00547248	92,160	504
	ATKA	98,893	0	98,893	417	0.00421668	92,160	389
	BELKOSKI	73,783	60	73,843	15	0.00020313	69,120	14
	FALSE PASS	74,131	0	74,131	453	0.0061108	69,120	422
	KING COVE	120,096	0	120,096	815	0.00678624	115,200	782
	NELSON LAGOON	74,467	0	74,467	4,992	0.06703641	69,120	4,634
	NIKOLSKI	69,429	0	69,429	1,615	0.02326117	69,120	1,608
	PAULOFF HARBOR	67,805	0	67,805	1,091	0.01609026	69,120	1,112
	ST. GEORGE	124,524	0	124,524	200	0.00160612	115,200	185
	ST.PAUL	161,878	0	161,878	1,260	0.00778363	138,240	1,076
	SAND POINT	137,687	0	137,687	1,665	0.01209265	138,240	1,672
	UNALASKA	121,658	0	121,658	548	0.00450442	115,200	519
	UNGA	73,523	0	73,523	185	0.00251622	69,120	174
TOTAL	13.00	1,292,896	60	1,292,956	13,776	0.01065466	1,221,120	13,011
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
ASRC								
	ANAKTUVUK PASS	91,483	0	91,483	535	0.00584808	92,160	539
	ATKASOOK	58,170	0	58,170	12,421	0.21352931	69,120	14,759
	BARROW	154,104	48,130	202,234	0	0	209,410	0
	KAKTOVIK	90,054	0	90,054	4,200	0.04663884	92,160	4,298
	NUIQSUT	95,332	22,716	118,048	15,270	0.12935416	123,603	15,999
	POINT HOPE	139,539	0	139,539	5,817	0.04168727	138,240	5,763
	POINT LAY	62,969	20,890	83,859	4,583	0.05465126	87,535	4,784
	WAINWRIGHT	112,063	55,667	167,730	9,407	0.05608418	159,825	8,964
TOTAL	8.00	803,713	147,403	951,116	52,233	0.05491758	972,053	53,383
BERING STRAITS	BREVIG MISSION	110,480	101,411	211,891	2,806	0.01324266	100,480	1,331
	COUNCIL	75,630	22,727	98,357	92	0.00093537	76,160	71
	GOLOVIN	121,634	75,555	197,189	75	0.00038035	101,120	38
	INGALIK	135,584	91,380	226,964	1,635	0.00720377	99,840	719
	KING ISLAND	125,575	8,920	134,495	4,162	0.03094539	124,800	3,862
	KOYUK	118,976	171,507	290,483	2,127	0.00732229	101,120	740
	MARY'S IGLOO	136,478	184,999	321,477	7,183	0.02234374	99,840	2,231
	NOME	221,541	190,513	412,054	2,703	0.00655982	204,160	1,339
	ST MICHAEL	140,471	36,946	177,417	1,905	0.01073742	125,440	1,347
	SHAKTOOLIK	133,203	57,281	190,484	6,157	0.03232292	124,800	4,034
	SHISHMAREF	121,243	70,285	191,528	11,535	0.06022618	124,800	7,516
	SOLOMON	66,959	0	66,959	314	0.00468944	69,120	324
	STEBBINS	121,734	54,584	176,318	1,388	0.00787214	126,080	993
	TELLER	146,177	81,251	227,428	3,342	0.01469476	126,080	1,853
	UNALAKLEET	183,637	111,797	295,434	570	0.00192937	181,760	351
	WALES	114,849	31,836	146,685	2,415	0.01646385	101,120	1,665
	WHITE MOUNTAIN	143,832	101,194	245,026	835	0.0034078	124,800	425
TOTAL	17.00	2,218,003	1,392,186	3,610,189	49,244	0.01364028	2,011,520	27,438
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
BRISTOL BAY								
	ALEKNAGIK	133,281	11,445	144,726	1,046	0.00722744	118,340	855
	CHIGNIK	124,439	7,411	131,850	615	0.00466441	119,086	555
	CHIGNIK LAGOON	98,616	9,597	108,213	0	0	95,466	0
	CHIGNIK LAKE	94,152	19,006	113,158	905	0.00799766	99,961	799
	CLARK'S POINT	92,288	18,919	111,207	1,153	0.01036805	110,948	1,150
	DILLINGHAM	190,472	25,983	216,455	7,161	0.03308314	164,825	5,453
	EGEGIK	100,149	12,939	113,088	8,390	0.07419001	94,470	7,009
	EKUK	73,514	12,521	86,035	1,812	0.0210612	76,309	1,607
	EKWOK	106,509	12,770	119,279	1,045	0.008761	93,682	821
	IGIUGIG	80,984	305,559	386,543	16,139	0.04175216	69,623	2,907
	ILIAMNA	84,357	47,945	132,302	3,460	0.02615229	71,959	1,882
	IVANOF BAY	76,191	13,187	89,378	0	0	81,532	0
	KOKHANOK	98,686	29,963	128,649	2,960	0.02300834	101,808	2,342
	KOLIGANEK	91,201	6,995	98,196	1,116	0.01136503	96,070	1,092
	LEVELOCK	89,730	27,292	117,022	2,995	0.02559347	96,771	2,477
	MANOKOTAK	117,744	22,771	140,515	790	0.00562218	125,620	706
	NAKNEK	146,074	244,512	390,587	11,386	0.02915102	128,790	3,754
	NEWHALEN	79,097	1,920	81,017	3,331	0.04111477	71,040	2,921
	NEW STUYAHOK	125,246	10,123	135,369	154	0.00113763	118,942	135
	NONDALTON	124,683	99,109	223,792	6,661	0.02976423	126,650	3,770
	PEDRO BAY	100,375	65,069	165,444	2,519	0.01522567	97,000	1,477
	PERRYVILLE	102,272	27,495	129,767	335	0.00258156	93,926	242
	PILOT POINT	96,050	16,504	112,554	6,221	0.05527121	99,179	5,482
	PORTAGE CREEK	81,204	72,705	153,909	157	0.00102008	141,825	145
	PORT HEIDEN	77,315	4,465	81,780	2,442	0.0298606	69,120	2,064
	SOUTH NAKNEK	98,403	0	98,403	2,685	0.02728568	92,160	2,515
	TOGIAK	140,464	26,449	166,913	1,150	0.00688982	157,493	1,085
	TWIN HILLS	81,243	15,305	96,548	3,525	0.03651034	69,950	2,554
	UGASHIK	78,807	10,838	89,645	2,856	0.031859	69,718	2,221
TOTAL	29.00	2,983,547	1,178,796	4,162,343	93,009	0.02234535	2,952,263	65,969
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
CALISTA								
	AKIACHAK	139,536	0	139,536	22,213	0.15919189	129,791	20,662
	AKIAK	135,484	4,295	139,779	7,440	0.05322688	124,473	6,625
	ALAKANUK	181,698	0	181,698	11,719	0.06449713	158,765	10,240
	ANDREAFSKY	86,216	0	86,216	4,155	0.04819291	72,811	3,509
	ANIAK	126,102	0	126,102	3,705	0.02938098	126,187	3,707
	ATMAUTLAUK	141,588	0	141,588	420	0.00296635	97,434	289
	BETHEL	161,280	42,357	203,637	30,651	0.15051768	237,095	35,687
	BILL MOORE'S SL.	91,622	1,720	93,342	10,158	0.10882561	71,141	7,742
	CHEFORNAK	133,348	0	133,348	13,353	0.10013648	99,280	9,942
	CHEVAK	179,074	0	179,074	15,216	0.08497046	156,831	13,326
	CHULOONAWICK	91,657	7,302	98,959	1,150	0.01162097	70,306	817
	CROOKED CREEK	105,889	0	105,889	0	0	97,741	0
	EEK	122,922	8,140	131,062	20,632	0.15742168	123,990	19,519
	EMMONAK	157,257	5,293	162,550	5,165	0.03177484	159,248	5,060
	GEORGETOWN	80,588	0	80,588	0	0	71,107	0
	GOODNEWS BAY	134,314	12,027	146,341	302	0.00206367	125,001	258
	HAMILTON	84,576	0	84,576	3,870	0.04575766	70,658	3,233
	HOOPER BAY	219,715	19,862	239,577	16,316	0.06810337	188,661	12,848
	KALSKAG	114,479	21,000	135,479	2,318	0.01710966	99,148	1,696
	KASIGLUK	142,099	0	142,099	32,261	0.22703186	128,780	29,237
	KIPNUK	152,131	0	152,131	33,502	0.2202181	130,978	28,844
	KOTLIK	144,589	0	144,589	3,513	0.02429645	124,869	3,034
	KONGIGANEK	155,464	9,896	165,360	11,580	0.07002903	126,099	8,831
	KWETHLUK	164,165	0	164,165	8,127	0.04950507	158,017	7,823
	KWIGILLINGOK	158,782	0	158,782	48,555	0.30579663	125,264	38,305
	LIME VILLAGE	73,325	60,178	133,503	1,563	0.0117076	70,262	823
	LOWER KALSKAG	109,138	0	109,138	5,483	0.05023915	99,543	5,001
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
CALISTA								
	MARSHALL	122,600	14,857	137,457	7,811	0.05682521	124,605	7,081
	MEKORYUK	142,924	0	142,924	13,279	0.09290952	128,648	11,953
	MOUNTAIN VILLAGE	164,242	6,899	171,141	18,285	0.10684173	159,688	17,061
	NAPIAMUTE	79,990	0	79,990	0	0	71,009	0
	NAPAKIAK	155,080	9,212	164,292	14,751	0.08978526	126,627	11,369
	NAPASKIAK	153,065	0	153,065	32,108	0.20976709	124,781	26,175
	NEWTOK	123,983	0	123,983	16,166	0.13038884	97,697	12,739
	NIGHTMUTE	111,822	714	112,536	4,895	0.04349719	73,471	3,196
	NUNAPITCHUK	159,837	0	159,837	42,794	0.26773499	129,484	34,667
	OHOGAMIUT	81,672	12,625	94,297	4,655	0.0493653	70,219	3,466
	OSCARVILLE	100,173	0	100,173	12,398	0.12376589	71,449	8,843
	PIAMIUT	95,923	0	95,923	5,406	0.0563577	70,219	3,957
	PILOT STATION	125,369	9,130	134,499	10,148	0.07545036	129,352	9,760
	PITKA'S POINT	83,426	15,045	98,471	4,128	0.04192097	73,031	3,062
	PLATINUM	89,544	0	89,544	927	0.01035245	72,108	746
	QUINHAGAK	135,760	14,718	150,478	5,765	0.03831125	130,407	4,996
	RED DEVIL	78,230	0	78,230	70	0.0008948	70,658	63
	RUSSIAN MISS (K)	111,959	12,743	124,702	1,230	0.00986351	97,170	958
	RUSSION MISS (Y)	105,086	31,867	136,953	375	0.00273817	97,741	268
	ST. MARY'S	148,468	0	148,468	3,258	0.02194412	128,253	2,814
	SCAMMON BAY	109,765	0	109,765	1,065	0.00970252	100,598	976
	SHELDON'S POINT	129,881	0	129,881	4,075	0.03137487	97,917	3,072
	SLEETMUTE	104,449	0	104,449	206	0.00197225	99,367	196
	STONY RIVER	79,658	0	79,658	274	0.0034397	72,723	250
	TOKSOOK BAY	163,887	0	163,887	10,807	0.06594177	127,506	8,408
	TULUKSAK	108,482	6,510	114,992	5,856	0.05092528	100,203	5,103
	TUNTUTULIAK	129,053	15,432	144,485	9,307	0.06441495	124,473	8,018
	TUNUNAK	133,027	16,338	149,365	30,633	0.20508821	128,209	26,294
	UMKUMIUTE	84,772	12,606	97,378	3,900	0.04005011	70,306	2,816
TOTAL	56.00	6,501,387	370,766	6,872,153	577,939	0.08409868	6,211,399	522,370
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
CHUGACH								
	CHENEGA	78,383	17,349	95,732	1,957	0.02044244	76,093	1,556
	ENGLISH BAY	60,082	22,205	82,287	665	0.0080815	76,400	617
	EYAK	129,882	149,075	278,957	9,817	0.0351918	148,730	5,234
	PORT GRAHAM	104,423	54,265	158,688	1,820	0.01146905	111,642	1,280
	TATITLEK	126,443	144,554	270,997	1,951	0.00719934	137,246	988
TOTAL	5.00	499,213	387,448	886,661	16,210	0.01828207	550,111	10,057
CIRI								
	CHICKALOON	83,416	0	83,416	448	0.00537069	69,120	371
	EKLUTNA	131,596	66,088	197,684	3,334	0.01686534	92,160	1,554
	KNIK	44,688	0	44,688	13,119	0.29357045	69,120	20,292
	NINILCHIK	124,141	0	124,141	0	0	115,200	0
	SALAMATOF	76,853	0	76,853	560	0.00728668	69,120	504
	SELDOVIA	126,230	0	126,230	700	0.00554543	115,200	639
	TYONEK	98,653	0	98,653	1,540	0.01561034	115,200	1,798
TOTAL	7.00	685,575	66,088	751,663	19,701	0.02620987	645,120	16,909
DOYON								
	ALATNA	80,386	0	80,386	590	0.00733959	69,120	507
	ALLAKAKET	102,736	0	102,736	770	0.00749494	92,160	691
	ANVIK	106,907	55	106,962	280	0.00261775	92,223	241
	BEAVER	102,638	197,549	300,187	23,411	0.07798805	136,725	10,663
	BIRCH CREEK	81,631	126,967	208,598	16,301	0.07814551	132,602	10,362
	CHALKYITSIK	82,790	0	82,790	13,259	0.16015219	91,790	14,700
	CIRCLE	106,501	187,576	294,077	1,368	0.00465185	115,982	540
	DOT LAKE	73,846	0	73,846	90	0.00121876	69,120	84
	EAGLE	103,247	0	103,247	460	0.00445534	92,160	411
	EVANSVILLE	79,465	0	79,465	256	0.00322154	69,120	223
	FORT YUKON	170,290	114,882	285,172	17,645	0.06187488	214,479	13,271
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
DOYON	GALENA	141,695	0	141,695	1,659	0.01170822	115,200	1,349
	GRAYLING	97,629	0	97,629	458	0.00469122	92,160	432
	HEALY LAKE	74,193	0	74,193	2,125	0.02864134	69,120	1,980
	HOLY CROSS	158,170	487	158,657	2,209	0.01392312	138,727	1,932
	HUGHES	83,532	0	83,532	1,145	0.01370737	69,120	947
	HUSLIA	109,478	0	109,478	6,448	0.05889768	115,200	6,785
	KALTAG	130,408	0	130,408	1,132	0.00868046	115,200	1,000
	KOYUKUK	104,143	0	104,143	2,560	0.02458158	92,160	2,265
	MCGRATH	116,227	0	116,227	4,782	0.04114362	92,160	3,792
	MANLEY HOT SPRINGS	92,962	0	92,962	1,272	0.01368298	69,120	946
	MINTO	120,235	0	120,235	4,280	0.03559687	115,200	4,101
	NENANA	177,489	0	177,489	170	0.00095781	138,240	132
	NIKOLAI	84,253	0	84,253	5,205	0.06177822	69,120	4,270
	NORTHWAY	118,738	0	118,738	6,045	0.05091041	115,200	5,865
	NULATO	128,447	141	128,588	330	0.00256633	115,341	296
	RAMPART	101,778	0	101,778	985	0.00967793	92,160	892
	RUBY	148,355	0	148,355	219	0.00147619	115,200	170
	SHAGELUK	110,728	0	110,728	4,311	0.03893326	92,160	3,588
	STEVENS VILLAGE	178,002	53,146	231,148	15,595	0.0674676	111,777	7,541
	TAKOTNA	78,189	0	78,189	340	0.00434843	69,120	301
	TANACROSS	134,146	0	134,146	3,908	0.02913244	92,160	2,685
	TANANA	182,887	0	182,887	2,312	0.01264171	138,240	1,748
	TELIDA	90,961	0	90,961	2,649	0.02912237	69,120	2,013
TOTAL	34.00	3,853,082	680,803	4,533,885	144,569	0.03188634	3,476,686	110,859
NANA								
	AMBLER	102,847	0	102,847	1,485	0.01443889	92,160	1,331
	BUCKLAND	105,740	0	105,740	2,281	0.02157188	92,160	1,988
	DEERING	110,041	104,346	214,387	676	0.00315318	92,160	291
	KIANA	124,899	261,891	386,790	4,058	0.01049148	115,200	1,209
	KIVALINA	101,148	0	101,148	3,018	0.02983739	92,160	2,750
	KOBUK	72,977	0	72,977	4,346	0.05955301	69,120	4,116
	KOTZEBUE	176,045	855,429	1,031,474	52,118	0.05052767	164,384	8,306
								ENCLOSURE 11

VILLAGE SUBMERGED LANDS

REGION	VILLAGE	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS ACRES	LAND/WATER RATIO	ENTITLEMENT ACRES	SUB LANDS IN ENT
	NOATAK	128,115	200,758	328,873	14,298	0.04347573	115,200	5,008
	NOORVIK	140,447	0	140,447	29,472	0.20984446	138,240	29,009
	SELAWIK	132,218	171,171	303,389	46,864	0.15446836	138,240	21,354
	SHUGNAK	97,271	0	97,271	6,025	0.06194035	92,160	5,708
TOTAL	11.00	1,291,748	1,593,595	2,885,343	164,641	0.05706115	1,201,184	68,541
REGION	VILLAGE							
SEALASKA								
	ANGOON	104,689		104,689	500	0.00477604	23,040	110
	CRAIG	112,857		112,857	504	0.00446581	23,040	103
	HOONAH	115,144		115,144	0	0	23,040	0
	HYDABERG	112,850		112,850	148	0.00131147	23,040	30
	KAKE	114,507		114,507	0	0	23,040	0
	KASAAN	115,054		115,054	0	0	23,040	0
	KLAWOCK	112,307		112,307	0	0	23,040	0
	KLUKWAN 16(d)	113,349		113,349	0	0	23,040	0
	SAXMAN	111,663		111,663	339	0.00303592	23,040	70
	YAKUTAT	113,722		113,722	0	0	23,040	0
TOTAL	10.00	1,126,143		1,126,143	1,491	0.00132399	230,400	305
								0
TOTAL 12 REGIONS				**28,133,300**	**1,151,559**	**0.040932**	**20,163,056**	**825,319**
								ENCLOSURE 11

VILLAGE SUB LANDS SAMPL

	STATE WIDE VILLAGE TOTALS VILLAGE CONVEYANCE AND SELECTION TOTALS				
REGION	TOTAL 12(a) CONV&SEL	TOTAL 12(b) CONV&SEL	TOTAL SAMPLE	SUBMERGED LANDS IN SAMPLE	LAND/WATER RATIO
AHTNA	808,936	251,912	1,060,848	18,746	0.01767078
ALEUT	1,292,896	60	1,292,956	13,776	0.01065466
ASRC	803,713	147,403	951,116	52,233	0.05491758
BERING STRAITS	2,218,003	1,392,186	3,610,189	49,244	0.01364028
BRISTOL BAY	2,983,547	1,178,796	4,162 343	93 009	0.02234535
CALISTA	6,501,387	370,766	6,872,153	577,939	0.00409060
CHUGACH	499 213	387,448	886,661	16,210	0.01828207
CIRI	685.575	66,088	751.663	19.701	0.02620967
DOYON	3,853,082	680,803	4,533,885	144,569	0.03188634
NANA	1,291,748	1,593,595	2,885,343	164,641	0.05706115
SEALASKA	1,126,143	0	1,126,143	1,491	0.00132399
			0		
TOTALS	**22,064,243**	**6,069,057**	**28,133,300**	**1,151,559**	**0.040932**
					ENCLOSURE 3

The DNR estimates of acreage within each physiographic type were based on land conveyances that had occurred as of mid-1982 (state 55.5 million acres, ANCSA 23.7 million acres). The remaining acres to make up final entitlements were computed by using a straight multiplication factor by physiographic type. Since that time, more than 12 million acres of additional state selections and 3 million acres of relinquishments have occurred, changing the state's selection pattern significantly. In addition, by the time BLM's study occurred conveyances to the state had reached 82 million acres and 34.8 million acres to ANCSA corporations. There was therefore less likelihood of error in BLM's assumptions regarding where land conveyance activity would occur.

The navigability factor was applied at different stages in the two studies, making direct comparisons difficult. In the DNR study, the water to land ratios and total meanderable water acreages were determined largely independent of navigability status (only a few very large waterbodies were found navigable by BLM prior to 1980, applying pre-Kandik-Nation navigability criteria, and these were excluded by DNR when calculating the water to land ratio). The DNR study also broke down the water acreage figures into various subcategories depending upon the size of the waterbody. In 1984, to take navigability more fully into account, the navigability factor was then applied to these waterbody categories by excluding all meanderable waterbodies large enough to be considered navigable under three different navigability scenarios. In the results shown below, the acreages are those produced by the intermediate scenario.

In the BLM study, navigability was only taken into account during the initial process of determining land to water ratios. Waters administratively determined navigable by BLM prior to that time were excluded from the samples. All other waters were considered non-navigable. No additional navigability factor was applied to reflect the changes in navigability criteria that have occurred since many of BLM's navigability determinations were originally made.

RESULTS

Estimated entitlement acreages and water to land ratios for state selections

Terrain Type		DNR	BLM
flat		29,180,779 (5.3%)	20,905,000 (1.2%)
rolling		55,124,725 (1.3%)	62,715,000 (0.6%)
mountainous		21,580,943 (0.4%)	20,905,000 (0.4%)
	Total	105,886,447	104,525,000

Estimated entitlement acreages and water to land ratios for ANCSA selections

Terrain Type		DNR	BLM
flat		16,590,561 (5.3%)	7,493,431 (3.3%) (regional)
rolling		22,442,402 (1.3%)	9,366,789 (0.4%) (regional)
mountainous		4,887,759 (0.4%)	1,873,358 (0.4%) (regional)
			21,141,898 (4.3%) (village)
	Total	43,920,722	39,875,476

Total meanderable water acres

	DNR Without additional navigability factor (1982 study)	DNR Applying additional navigability factor (1984 study)	BLM Without additional navigability factor
state	2,261,558	460,000	693,462
ANCSA	1,450,629	278,000	1,201,620
Total	3,712,187	783,000	1,895,082

ANALYSIS

The navigability factor was clearly the major cause of the different results produced by the 1984 DNR and 1987 BLM studies. Because of the uncertain status of navigability in Alaska, the legitimacy of the navigability assumptions that were used in these studies cannot be confirmed, either now or in the forseeable future. For example, if all rivers over 198 feet wide and lakes over 50 acres in size were proven to be navigable, the true acreage of non-navigable meanderable waters within state and ANCSA selections would be reduced to zero. Conversely, if future judicial navigability decisions revealed that the navigability assumptions used in the two studies were too broad, the non-navigable acreage figures would increase.

Apart from the navigability factor, the much larger BLM sample size, use of conveyed townships as samples, and more recent conveyance data, all combine to make the recent BLM computations more up-to-date in estimating the water to land ratios and the acres of each physiographic category of lands that are and will be associated with conveyances to the state and ANCSA corporations. The effect of the improved data used in the BLM study on the final acreage estimates was mixed. For example, the BLM study indicated far less state selections of the wetter, "flat" category of lands, thus producing a significantly reduced meanderable waters acreage total for state selections (only 698,112 acres under the BLM study compared with 2,261,558 acres estimated by DNR before applying the navigability factor).

In light of the differences in the navigability assumptions used by DNR and BLM, it is fair to assume that the true non-navigable but meanderable water acreage figures for state and ANCSA selections lies somewhere between the results predicted by the two studies. The following factors also need to be considered, however, before using either of these studies as the "bottom line".

1. The December 1986 Gulkana River decision on navigability was not considered in either the DNR or the BLM study, although some of the DNR navigability assumptions paralleled the result in that case. Applying the guidelines rendered in that decision will lower the acreage figures in both studies. To determine the lower acreage figure at this time would be both time consuming and difficult. From a management perspective, it would also be an inefficient use of limited resources. This process is best left to be done prior to issuing patent on lands already tentatively approved or interim conveyed. On selected lands, the most recent navigability criteria will be applied before issuing a tentative approval, interim conveyance or patent.

2. The acreage of meanderable waters on lands patented to the state prior to December 5, 1983 (21.4 million acres) needs to be subtracted from the estimate. This acreage will only be recalculated at state expense pursuant to the Memorandum of Agreement between the U.S. Department of Interior and the State of Alaska dated March 20, 1984. There are no estimates available for that acreage figure.

3. The time to make state selections does not expire until 1994 and refinement of state selections is a constantly on-going process. These facts, combined with state selections that conflict with ANCSA selections and over selections, make it impossible to determine the exact and final physiographic ownership pattern for state selections at this time.

Tom Hawkins
Tom Hawkins, Director
Division of Land & Water Management
Department of Natural Resources

Robert W. Arndorfer
Robert W. Arndorfer, Deputy
State Director for Conveyance
Management, Bureau of Land Management

JOINT FEDERAL-STATE
Comparison of Meanderable Waterbody Studies
April 27, 1987

In September 1984 the Alaska Department of Natural Resources (DNR) prepared a report estimating the amount of water acreage associated with expected state and ANCSA land conveyances. The DNR report was based upon a water acreage study prepared in 1982. At the request of Congress, the Bureau of Land Management (BLM) completed a similar study in March 1987. The purpose of this paper is to compare the methodologies and results of these two independent studies.

METHODOLOGY

The primary purpose of each study was to estimate the acreage of non-navigable but meanderable waterbodies (rivers over 198 feet wide, lakes over 50 acres) on land owned or to be conveyed to the state or ANCSA corporations. To arrive at an accurate estimate of non-navigable waters, all navigable waters needed to be excluded from the acreage figures. This "navigability factor" was the most uncertain and subjective element of both studies. Only the courts, not the state or BLM, can make final navigability determinations. Moreover, the navigability status of many meanderable waterbodies in Alaska is either unknown or disputed. As described below, different assumptions and data were used to address this navigability factor in the DNR and BLM studies. These assumptions produced significantly different results. Differences in sample size and data also contributed to differences in the results of the two studies.

In order to arrive at the acreage estimates, both studies used the same general approach. Utilizing U.S. Geological Survey Professional Paper #482, "Physiographic Divisions of Alaska", the state was divided into distinct physiographic categories. Those categories ranged from flat to mountainous terrain. DNR used seven categories and BLM used three categories. The fewer BLM categories resulted from the lumping together of two or more closely-related categories used by DNR. Random sample townships were then picked within each physiographic category. DNR picked townships ignoring land conveyance status. BLM sampled all land conveyed (14,719,026 acres) and selected (12,453,689 acres) by ANCSA village corporations and a statistical sample of state (5,876,780 acres) and ANCSA regional (3,485,517 acres) conveyed land. DNR sampled a total of 4,116,480 acres (3% of ANCSA and state entitlements) and BLM sampled a total of 36,535,013 acres (25% of ANCSA and state entitlements).

Once the samples were picked, the acreage of meanderable waters within each sample township were calculated. For the DNR computations, all data used to determine the land to water ratios for the sample townships were derived from USGS 1:63,360 quadrangle sheets. In the BLM study, survey plats (42% of sample) and master title plats (58% of sample) were utilized. Using the hydrographic data derived from these sample townships, water to land ratios for each physiographic type were established. These ratios were then applied to estimates of how much land within each physiographic type would be conveyed to produce an estimate of the total number of acres of meanderable waters.

Attachement 7

CHART 1

PHYSIOGRAPHIC TYPE	1A	1B	2A	2B	3	4	5	TOTAL
1) Total in state	65,792,846 17.84%	38,069,241 10.32%	26,523,046 7.19%	87,794,558 23.8%	67,764,358 18.38%	72,490,046 19.66%	10,344,824 2.81%	368,771,052 100%
2) Total Native Ownership	10,269,733 23.4%	6,320,828 14.4%	4,650,767 10.6%	9,968,424 22.7%	7,823,211 17.8%	4,693,004 10.7%	194,755 0.4%	43,920,722 100%
3) Total State Ownership	13,039,776 12.3%	16,141,003 15.3%	4,083,915 3.9%	29,236,292 27.6%	21,804,518 20.6%	20,447,738 19.3%	1,133,205 1%	105,886,447 100%

ACRES/PERCENT

1) From Geological Professional Paper 482, Physiographic Divisions of Alaska, 1965.

2) From BLM computer files February 5, 1982, showing total land conveyed (Interim conveyed and patented) to date which was 23,710,709. Straight multiplication factor was used on all physiographic types to project final Native ownership.

3) From State Land Activity map dated January 1, 1982, showing patent, tentative approval, and selected categories. Figures adjusted (selected land only) to reflect total acreage entitlements.

Attachment A
Computation Assumptions

Computation of water to land percentages for waterbodies in Alaska presents some unique problems that can only be resolved by making a number of assumptions.

All data is derived from USGS 1:63,360 quadrangle sheets. Rivers and streams are depicted by one of three methods:

1) interrupted line - designates intermittent flow which is assumed to have no ordinary high water and that flow is present during periods of unusual precipitation or break-up only. Intermittents are not included in these figures.

2) single solid line - designates width of less than 50' and has OHW.

3) double solid line - designates width of 50' or greater. Specification from Tom Taylor of USGS.

Most large double line rivers in excess of 200' (measured) were planimetered for acreage including gravel areas and a wheel mileage gauge determined length.

The remainder of this category of rivers was computed by wheel gauge and measured width to derive acreage.

Braided single line rivers were measured only as a single line river bed with a wheel gauge.

All remaining single line rivers were measured with the wheel gauge.

All quad sheets were derived from aerial photos flown in June-July-August. Any unusual flow fluctuations during these months will bias the figures.

Width of depicted double line streams is resolved to a reasonable accuracy so that measured width has semblance of accuracy.

Gradient was not considered in any of the measurements; only straight line distance.

No ground truthing was accomplished by USGS in constructing the quad sheets.

A standard factor of 10% of measured distance on single line streams was added to compensate for meanders beyond the capability of the wheel gauge which registers 2" for one complete rotation of the wheel.

No single line river data was extracted for physiographic type 1A.

Acreage computation for single line streams assumed standard width of 25'.

CHART 1

PHYSIOGRAPHIC TYPE	1A	1B	2A	2B	3	4	5	TOTAL
1) Total in state	65,792,846 17.84%	38,069,241 10.32%	26,523,046 7.19%	87,794,558 23.8%	67,764,358 18.38%	72,490,046 19.66%	10,344,824 2.81%	368,771,052 100%
2) Total Native Ownership	10,269,733 23.4%	6,320,028 14.4%	4,650,767 10.6%	9,968,424 22.7%	7,823,211 17.8%	4,693,004 10.7%	194,755 0.4%	43,920,722 100%
3) Total State Ownership	13,039,776 12.3%	16,141,003 15.3%	4,083,915 3.9%	29,236,292 27.6%	21,804,518 20.6%	20,447,738 [illegible].3%	1,133,205 1%	105,886,447 100%

ACRES/PERCENT

1) From Geological Professional Paper 482, Physiographic Divisions of Alaska, 1965

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3) From State Land Activity map dated January 1, 1982, showing patent, tentative approval, and selected categories. Figures adjusted (selected land only) to reflect total acreage entitlements.

CHART 2

SAMPLE RESULTS

PHYSIOGRAPHIC TYPES	1A	1B	2A	2B	3	4	5
acres [illegible] type within state 1 % of total land mass*	65,792,846 17.94	38,069,241 10.32	26,521,046 7.19	87,794,358 23.80	67,764,258 18.38	72,490,046 19.66	10,344,824 2.81
total acreage sampled 2 % of total type	499,200 0.76	437,760 1.15	552,960 2.03	829,440 0.94	875,520 1.29	737,280 1.02	184,320 1.78
minus nav water within sample area 3	11,363	390	-0-	-0-	-0-	-0-	-0-
net acreage (2 minus 3) 4	487,837	437,370	552,960	829,440	875,520	737,280	184,320
total non-nav water acreage within sample area 5	57,505	12,083	7,081	9,428	12,312	6,034	12
total land acres within sample area (4 minus 5) 6	430,332	425,287	545,879	820,012	863,208	731,246	184,308
% of net acreage that is non-nav water (5 divided by 4) 7	11.79	2.76	1.28	1.14	1.41	0.82	0.01
LAKES							
30 - 149/% 8	(115) 9832/1.97	(19) 1257/.29	(5) 454/.08	(9) 929/.11	(10) 629/.07	(3) 167/.02	-0-
150 - 300/% 9	(50) 9920/1.99	(3) 665/.15	-0-	(1) 218/.03	(4) 755/.09	(2) 294/.04	-0-
>300/% 10	(39) 35760/7.16	(3) 934/.21	-0-	-0-	(4) 4760/.54	-0-	-0-
total/% 11	(204) 55520/11.12	(25) 2856/.65	(5) 454/.08	(10) 1147/.14	(18) 6144/.70	(5) 461/.06	-0-
RIVERS							
< 100'/% 12	╳	(947) 2868/.66	(1325) 4015/.73	(1035) 4953/.60	(1346) 4078/.47	(686) 2077/.28	(4) 12/.01
100' - 200'/% 13	(86) 1079/.22	(7) 40/.01	(49.8) 954/.17	(32) 409/.05	(23.7) 642/.07	(21) 254/.03	-0-
> 200'/% 14	(21) 895/.18	(41.2) 6329/1.44	(21) 1658/.30	(23) 2914/.35	(14.5) 1448/.17	(30.2 3242/.44	-0-
total/% 15	(179) 1974/.40	(995.2) [illegible]/2.11	(1395.8) 6627/1.20	[illegible] [illegible]/1.00	(1384.2) 6168/.71	(737.2) 5573/.76	(4) 12/.01

1) Figure in parenthesis is the total number of waterbodies of that category for lakes and total miles for rivers.

2) % figures for lakes and rivers [illegible]

* total state acreage 368,[illegible]

Chart 3

PROJECTED WATER ACREAGES BY

PHYSIOGRAPHIC TYPE

"IA"

WNERSHIP	LAND AND WATER TOTAL ACRES	LAKES GROUPED BY ACREAGE SIZES[a] 1) 50 to 149 ACRES			2) 150 to 299 ACRES			3) OVER 300 ACRES			4) TOTAL FOR LAKES OVER 50 ACRES		
		No.	ACRES	%	No.	ACRES	%	No.	ACRES	%	No.	ACRES	%
STATE	13,039,776	3005	256,884	1.97	1307	259,492	1.99	1018	933,648	7.16	5328	1,450,023	11.12
ATIVE	10,269,733	2366	202,314	1.97	1029	204,368	1.99	802	735,313	7.16	4196	1,141,994	11.12
EDERAL	42,483,337	9789	836,922	1.97	4258	845,418	1.99	3317	3,041,807	7.16	17,359	4,724,147	11.12
TOTAL	65,792,846	15,160	1,296,120	1.97	6594	1,309,278	1.99	5138	4,710,768	7.16	26,882	7,316,164	11.12

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH[a] 5) UNDER 100 FEET		6) 100 to 199 FEET		7) OVER 200 FEET		8) TOTAL	
		Mileage Acres	%	Mileage Acres	%	Mileage Acres	%	Mileage Acres	%
TATE	13,039,776	mi ac		2,340 mi 28,688 ac	.22	551 mi 23,472 ac	.18	2,880 mi 52,159 ac	.40
ATIVE	10,269,733	mi ac		1,843 mi 22,593 ac	.22	434 mi 18,486 ac	.18	2,268 mi 41,079 ac	.40
EDERAL	42,483,337	mi ac		7,623 mi 93,463 ac	.22	1,794 mi 76,470 ac	.18	9,383 mi 169,933 ac	.40
TOTAL	65,712,846	mi ac		11,805 mi 144,744 ac	.22	2,779 mi 118,427 ac	.18	14,532 mi 263,171 ac	.40

[a] Excluding tidal waters and BLM determined navigable water

See Attachment "A" For Computation Assumptions

PHYSIOGRAPHIC TYPE
"1B"

LAKES

WNERSHIP	LAND AND WATER TOTAL ACRES	LAKES GROUPED BY ACREAGE SIZES [a]											
		1) 50 to 149 ACRES			2) 150 to 299 ACRES			3) OVER 300 ACRES			4) TOTAL FOR LAKES OVER 50 ACRES		
		No.	ACRES	%	No.	ACRES	%	No.	ACRES	%	No.	ACRES	%
TATE	16,141,003	707	46,809	.29	109	24,212	.15	109	33,896	.21	918	104,917	.65
ATIVE	6,320,828	277	18,330	.29	43	9,481	.15	43	13,274	.21	360	41,085	.65
EDERAL	15,607,410	684	45,261	.29	106	23,411	.15	105	32,776	.21	888	101,448	.65
TOTAL	38,069,241	1,669	110,401	.29	258	57,104	.15	257	79,945	.21	2166	247,450	.65

RIVERS

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH [a]							
		5) UNDER 100 FEET		6) 100 to 199 FEET		7) OVER 200 FEET		8) TOTAL	
		Mileage Acres	%	Mileage Acres	%	Mileage Acres	%	Mileage Acres	%
TATE	16,141,003	35,176 mi 106,531 ac	.66	282 mi 1,614 ac	.01	1,515 mi 232,430 ac	1.44	36,733 mi 340,575 ac	2.11
ATIVE	6,320,828	13,775 mi 41,717 ac	.66	111 mi 632 ac	.01	593 mi 91,020 ac	1.44	14,385 mi 133,369 ac	2.11
EDERAL	15,607,410	34,013 mi 103,009 ac	.66	273 mi 1,561 ac	.01	1,465 mi 224,747 ac	1.44	35,519 mi 329,316 ac	2.11
TOTAL	38,069,241	82,964 mi 251,257 ac	.66	666 mi 3,807 ac	.01	3,574 mi 548,197 ac	1.44	86,638 mi 803,261 ac	2.11

[a] Excluding tidal waters and BLM determined navigable water
See Attachment "A" For Computation Assumptions

PHYSIOGRAPHIC TYPE
"2 A"

WNERSHIP	LAND AND WATER TOTAL ACRES	LAKES — LAKES GROUPED BY ACREAGE SIZES [a] 1) 50 to 149 ACRES No.	ACRES	%	2) 150 to 299 ACRES No.	ACRES	%	3) OVER 300 ACRES No.	ACRES	%	4) TOTAL FOR LAKES OVER 50 ACRES No.	ACRES	%
TATE	4,083,915	36	3,267	.08	0	0	0	0	0	0	36	3,267	.08
ATIVE	4,650,767	41	3,721	.08	0	0	0	0	0	0	41	3,721	.08
EDERAL	17,788,364	157	14,231	.08	0	0	0	0	0	0	157	14,231	.08
TOTAL	26,523,046	234	21,218	.08	0	0	0	0	0	0	234	21,218	.08

	TOTAL ACRES	RIVERS — RIVERS GROUPED BY AVERAGE WIDTH [a] 5) UNDER 100 FEET Mileage / Acres	%	6) 100 to 199 FEET Mileage / Acres	%	7) OVER 200 FEET Mileage / Acres	%	8) TOTAL Mileage / Acres	%
TATE	4,083,915	9,839 mi 29,813 ac	.73	362 mi 6,943 ac	.17	155 mi 12,252 ac	.30	10,322 mi 49,007 ac	1.20
ATIVE	4,650,767	11,204 mi 33,951 ac	.73	412 mi 7,906 ac	.17	177 mi 13,952 ac	.30	11,755 mi 55,809 ac	1.20
EDERAL	17,788,364	42,854 mi 129,855 ac	.73	1,579 mi 30,240 ac	.17	676 mi 53,365 ac	.30	44,960 mi 213,460 ac	1.20
TOTAL		63,896 mi 193,618 ac	.73	2,354 mi 45,089 ac	.17	1,008 mi 79,569 ac	.30	67,037 mi 318,277 ac	1.20

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[a] Excluding tidal waters and BLM determined navigable water
See Attachment "A" For Computation Assumptions

PHYSIOGRAPHIC TYPE
"2B"

LAKES

WNERSHIP	LAND AND WATER	LAKES GROUPED BY ACREAGE SIZES [a]											
		1) 50 to 149 ACRES			2) 150 to 299 ACRES			3) OVER 300 ACRES			4) TOTAL FOR LAKES OVER 50 ACRES		
	TOTAL ACRES	No.	ACRES	%	No.	ACRES	%	No.	ACRES	%	No.	ACRES	%
TATE	29,236,292	312	32,160	.11	40	8,771	.03	0	0	0	357	40,931	.14
ATIVE	9,968,424	106	10,965	.11	14	2,991	.03	0	0	0	122	13,956	.14
:DERAL	48,589,842	518	53,449	.11	67	14,577	.03	0	0	0	593	68,026	.14
TOTAL	87,794,558	936	96,574	.11	121	26,338	.03	0	0	0	1,072	122,912	.14

RIVERS

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH [a]							
		5) UNDER 100 FEET		6) 100 to 199 FEET		7) OVER 200 FEET		8) TOTAL	
		Mileage Acres	%	Mileage Acres	%	Mileage Acres	%	Mileage Acres	%
TATE	29,236,292	58,721 mi 175,418 ac	.60	1,144 mi 14,618 ac	.05	806 mi 102,327 ac	.35	59,666 mi 292,363 ac	1.0
ATIVE	9,968,424	20,022 mi 59,811 ac	.60	390 mi 4,984 ac	.05	275 mi 34,889 ac	.35	20,343 mi 99,684 ac	1.0
EDERAL	48,589,842	97,592 mi 291,539 ac	.60	1,901 mi 24,295 ac	.05	1,340 mi 170,064 ac	.35	99,163 mi 485,898 ac	1.0
TOTAL	87,794,558	176,333 mi 526,767 ac	.60	3,434 mi 43,897 ac	.05	2,421 mi 307,280 ac	.35	179,173 mi 877,946 ac	1.0

[a] Excluding tidal waters and BLM determined navigable water
See Attachment "A" For Computation Assumptions

Chart 7

PHYSIOGRAPHIC TYPE

"3"

LAKES

OWNERSHIP	LAND AND WATER TOTAL ACRES	LAKES GROUPED BY ACREAGE SIZES a											
		1) 50 to 149 ACRES			2) 150 to 299 ACRES			3) OVER 300 ACRES			4) TOTAL FOR LAKES OVER 50 ACRES		
		No.	ACRES	%	No.	ACRES	%	No.	ACRES	%	No.	ACRES	%
STATE	21,804,518	243	15,263	.07	104	19,624	.09	99	117,744	.54	447	152,632	.70
NATIVE	7,823,211	87	5,476	.07	37	7,041	.0;	35	42,245	.54	160	54,762	.70
FEDERAL	38,136,629	424	26,696	.07	182	34,323	.09	173	205,938	.54	782	266,956	.70
TOTAL	67,764,358	754	47,435	.07	323	60,988	.09	307	365,928	.54	1390	474,351	.70

RIVERS

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH a							
		5) UNDER 100 FEET		6) 100 to 199 FEET		7) OVER 200 FEET		8) TOTAL	
		Mileage Acres	%	Mileage Acres	%	Mileage Acres	%	Mileage Acres	%
STATE	21,804,518	33,825 mi 102,481 ac	.47	563 mi 15,263 ac	.07	371 mi 37,068 ac	.17	34,742 mi 154,812 ac	.71
NATIVE	7,823,211	12,136 mi 36,769 ac	.47	202 mi 5,476 ac	.07	133 mi 13,299 ac	.17	12,465 mi 55,545 ac	.71
FEDERAL	38,136,629	59,161 mi 179,242 ac	.47	986 mi 26,696 ac	.07	649 mi 64,832 ac	.17	60,765 mi 270,770 ac	.71
TOTAL	67,764,358	105,123 mi 318,492 ac	.47	1,751 mi 47,435 ac	.07	1,154 mi 115,199 ac	.17	107,973 mi 481,127 ac	.71

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[a] Excluding tidal waters and BLM determined navigable water

See Attachment "A" For Computation Assumptions

PHYSIOGRAPHIC TYPE
" 4"

LAKES

OWNERSHIP	LAND AND WATER TOTAL ACRES	LAKES GROUPED BY ACREAGE SIZES [a] 1) 50 to 149 ACRES No.	 ACRES	 %	 2) 150 to 299 ACRES No.	 ACRES	 %	 3) OVER 300 ACRES No.	 ACRES	 %	 4) TOTAL FOR LAKES OVER 50 ACRES No.	 ACRES	 %
STATE	20,447,738	73	4,090	.02	56	8,179	.04	0	0	0	133	12,269	.06
NATIVE	4,693,004	17	939	.02	13	1,877	.04	0	0	0	31	2,816	.06
EDERAL	47,349,304	170	9,470	.02	129	18,940	.04	0	0	0	308	28,410	.06
TOTAL	72,490,046	260	14,498	.02	197	28,996	.04	0	0	0	472	43,494	.06

RIVERS

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH [a] 5) UNDER 100 FEET Mileage Acres	 %	 6) 100 to 199 FEET Mileage Acres	 %	 7) OVER 200 FEET Mileage Acres	 %	 8) TOTAL Mileage Acres	 %
STATE	20,447,738	18,910 mi 57,254 ac	.28	507 mi 6,134 ac	.03	838 mi 89,970 ac	.44	20,286 mi 153,358 ac	.75
NATIVE	4,693,004	4,340 mi 13,140 ac	.28	116 mi 1,408 ac	.03	192 mi 20,649 ac	.44	4,656 mi 35,198 ac	.75
FEDERAL	47,349,304	43,788 mi 132,578 ac	.28	1,174 mi 14,205 ac	.03	1,941 mi 208,337 ac	.44	46,975 mi 355,120 ac	.75
TOTAL	72,490,046	67,038 mi 202,972 ac	.28	1,798 mi 21,747 ac	.03	2,971 mi 318,956 ac	.44	71,918 mi 543,675 ac	.75

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[a] Excluding tidal waters and BLM determined navigable water

See Attachment "A" For Computation Assumptions

Chart 9

[illegible] BY

PHYSIOGRAPHIC TYPE

"5"

LAKES

WNERSHIP	LAND AND WATER TOTAL ACRES	LAKES GROUPED BY ACREAGE SIZES [a] 1) 50 to 149 ACRES No.	ACRES	%	2) 150 to 299 ACRES No.	ACRES	%	3) OVER 300 ACRES No.	ACRES	%	4) TOTAL FOR LAKES OVER 50 ACRES No.	ACRES	%
STATE	1,133,205	0	0	0	0	0	0	0	0	0	0	0	0
ATIVE	194,755	0	0	0	0	0	0	0	0	0	0	0	0
FEDERAL	9,016,864	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	10,344,824	0	0	0	0	0	0	0	0	0	0	0	0

RIVERS

	TOTAL ACRES	RIVERS GROUPED BY AVERAGE WIDTH [a] 5) UNDER 100 FEET Mileage Acres	%	6) 100 to 199 FEET Mileage Acres	%	7) OVER 200 FEET Mileage Acres	%	8) TOTAL Mileage Acres	%
STATE	1,133,205	38 mi 113 ac	.01	0 mi 0 ac	0	0 mi 0 ac	0	38 mi 113 ac	.01
NATIVE	194,755	6 mi 19 ac	.01	0 mi 0 ac	0	0 mi 0 ac	0	6 mi 19 ac	.01
FEDERAL	9,016,864	300 mi 901 ac	.01	0 mi 0 ac	0	0 mi 0 ac	0	300 mi 901 ac	.01
TOTAL	10,344,824	345 mi 1,034 ac	.01	0 mi 0 ac	0	0 mi 0 ac	0	345 mi 1,034 ac	.01

[a] Excluding tidal waters and BLM determined navigable water

See Attachment "A" For Computation Assumptions

2-82

PHYSIOGRAPHIC TYPE

"Summary"

WNERSHIP	LAND AND WATER TOTAL ACRES	LAKES – LAKES GROUPED BY ACREAGE SIZES [a] – 1) 50 to 149 ACRES No.	ACRES	%	2) 150 to 299 ACRES No.	ACRES	%	3) OVER 300 ACRES No.	ACRES	%	4) TOTAL FOR LAKES OVER 50 ACRES No.	ACRES	%
TATE	105,886,447	4,376	358,473	.34	1,616	320,278	.30	1,226	1,085,288	1.02	7,219	1,764,039	1.67
ATIVE	43,920,722	2,894	241,745	.55	1,136	225,758	.51	880	790,832	1.80	4,910	1,258,334	2.87
EDERAL	218,963,883	11,742	986,029	.45	4,742	936,669	.43	3,595	3,280,521	1.50	20,086	5,203,218	2.38
TOTAL	368,771,052	19,013	1,586,246	.43	7,493	1,482,704	.40	5,702	5,156,641	1.40	32,216	8,225,589	2.23

	TOTAL ACRES	RIVERS – RIVERS GROUPED BY AVERAGE WIDTH [a] – 5) UNDER 100 FEET Mileage / Acres	%	6) 100 to 199 FEET Mileage / Acres	%	7) OVER 200 FEET Mileage / Acres	%	8) TOTAL Mileage / Acres	%
TATE	105,886,447	156,509 mi 471,610 ac	.45	5,198 mi 73,260 ac	.07	4,236 mi 497,519 ac	.47	164,667 mi 1,042,387 ac	.98
ATIVE	43,920,722	61,483 mi 185,407 ac	.42	3,074 mi 42,999 ac	.10	1,804 mi 192,295 ac	.44	65,878 mi 420,703 ac	.96
EDERAL	218,963,883	277,708 mi 837,124 ac	.38	13,536 mi 190,460 ac	.09	7,865 mi 797,815 ac	.36	297,065 mi 1,825,398 ac	.83
TOTAL	368,771,052	495,699 mi 1,494,140 ac	.41	21,808 mi 306,719 ac	.08	13,907 mi 1,487,628 ac	.40	527,616 mi 3,288,491 ac	.89

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[a] Excluding tidal waters and BLM determined navigable water

See Attachment "A" For Computation Assumptions

2163.04(d) Report
1. Riparian Boociger

The following report was done for the purpose of analyzing the amount of water acreage associated with expected State and Native land ownership.

To arrive at the necessary acreage figures, the State of Alaska was divided into seven distinct physiographic types. The physiographic types are described as follows:

Type 1A; Plains and lowlands, High water to land ratio (11.8%)
Type 1B; Plains and lowlands, Moderate water to land ratio (2.8%)
Type 2A; Plateaus and highlands, High water to land ratio (1.3%)
Type 2B; Plateaus and highlands, Moderate water to land ratio (1.1%)
Type 3; Low mountains generally with rolling topography (1.4%)
Type 4; Moderately high, somewhat rugged mountains (0.8%)
Type 5; High rugged mountains (0.01%)

Chart 1 is a breakdown of these physiographic types by acreage on a Statewide basis as well as by projected final Native and State ownership. Map 1 shows the physiographic regions within the state.

Within each of the physiographic types, several townships were randomly selected and analyzed for the amount of water covered acreage. In all cases the samples were conducted where BLM had already made navigable water determinations. All waters found navigable by BLM were excluded from the samples.

The samples were done by separating rivers and lakes and then breaking each into distinct sub-categories. Each Sub-category was done by total numbers and acreage of waterbodies. The categories were:

Lakes
50 to 149 acres
150 to 299 acres
over 300 acres

Rivers
under 100 feet
100 to 199 feet
over 200 feet

Chart 2 shows the results of the individual samples.

Once the samples were completed an average acreage size by sub-category was determined. Utilizing the sample size and water figures, a resultant acreage per category per final land ownership type was determined.

Charts 3 through 9 show each individual sample by physiographic type and chart 10 shows the compilation of all the physiographic types by projected final Native and State ownership.

The assumptions, references, and documentation that was used in compiling each chart is shown as footnotes to each chart.

	BLM MANUAL OF SURVEYING INSTRUCTIONS		
Riparian Ownership	1. Using State Navigability Criteria	2. Using Current BLM Navigability Criteria	3. Using Most Conservativ BLM Navigability Criteri
State: Rivers	0	100,000	500,000
Lakes	180,000	360,000	1,700,000
Native: Rivers	0	38,000	190,000
Lakes	120,000	240,000	1,200,000
Total: State	180,000	460,000	2,200,000
Total: Native	120,000	278,000	1,390,000
TOTAL	300,000	783,000	3,590,000

The BLM Manual of Surveying Instructions requires that all rivers 200 ft. and wider and all lakes 50 acres and larger be meandered. However, only the beds of nonnavigable rivers and lakes which have been meandered are subject to riparian ownership. The acreage figures shown here were arrived at by subtracting the acreage of navigable water bodies from the total acreage of meanderable water bodies. The chart includes three different estimates based upon different assumptions used to determine the acreage of navigable water bodies. The acreage figures are taken from the Land Use Planning Commission Navigable Waters Acreage Study (Esca-Tech Corp, March 20, 1978) and an Alaska Department of Natural Resources report, "Analysis of Water Acreage Associated with State and Native Land Ownership" (October, 1982).

1. These acreage figures assume that all rivers over 200 ft. wide, 1/2 of all lakes between 50-149 acres, and all lakes over 150 acres are navigable. Those dimensions were arrived at by applying the state's navigability criteria (excluding travel in the winter on frozen water bodies).

2. These acreage figures are based upon the navigability criteria currently being used by BLM. Those criteria do not include raft and jet boat travel; floatplane travel, tourist travel, or travel on isolated lakes. Accordingly, some rivers over 200 ft. wide considered navigable by the State are considered nonnavigable by BLM, as are all lakes between 50-149 acres and many lakes over 150 acres.

3. These acreage figures are based upon the navigability criteria actually used by BLM for land conveyances between 1959 and 1980. Those criteria were more conservative than BLM's current criteria. Accordingly, these figures include many rivers and lakes found nonnavigable at the time of conveyance but which BLM would find navigable under BLM's current standards.

Alaska Department of Natural Resources, Division of Land and Water Management, September 20, 1984

MILESTONE CHECK LIST

1. Procedure for developing Master Lists.

2. After first 100 townships for State and after first 100 townships for Regional Corporations give tally of the number of townships in each of the three terrain types (e.g. how many of the 100 are "mountaneous", how many are "rolling", and how many are "flat."

3. Check for complete information on Master Lists (except for the "Final Sample Size" and the "Total Acres").

4. Copy Master Lists.

5. Original documents in Project Manager File as follows:
    - Documentation Text of Sample Selection-Master Lists
    - Random Sample Sheets
    - Sequence Listings for State and Regional Corp.
    - Original Master Lists--Six
        - 3 State-Mountaneous, Rolling, Flat
        - 3 Regional Corp.-Mountaneous, Rolling, Flat

6. Verify Final Sample Size per Master List from Step #2 above.

7. Procedure for Data Collection-dry run check.

8. Documentation text of Data Collection Procedure.

9. Verify complete header information on township tally sheets. Tally total acres per township for each tally sheet.

10. Recheck total acres on each tally sheet.

11. Enter total acres from each tally sheet on original Master Lists.

12. Verify correct entry of acreage for each township on original Master List.

13. Confirm Project Manager File is Complete as follows:
    - Written documentation of sample selection
    - Random Sample Numbers Lists (two)
    - Original Master Lists (six)
    - Written documentation of Data Collection Procedure
    - Original Tally Sheets-one for each township sampled
    - Map Overlays as follows:
        - Township base map
        - USGS Physiographic Divisions map (1949)
        - Terrain types overlay
        - Township Plots of State and of Regional Corp.

14. Apply figures to statistical estimator.

15. Results--final figures.

16. Final Report.

17. Complete Project Manager File with the following:
    Statistical Estimator Used
    Final Figure Results
    Final Report

*** CAUTIONARY NOTES ***

Be sure that each and every page of written documentation carries a date. The absolute final version should have the date and the word "final".

Every document page, and list page, and map or overlay should have a label attached identifying it as belonging to the Project Manager File. This might help to keep documents from "wandering away" and not returning.

Each time there is a need to copy from the Project Manager File one and only one person (the same person everytime) should have access and directly do the copying to ensure that these originals are accounted for.

February 17, 1987

PROCEDURE - DATA COLLECTION, TALLY SHEETS

Purpose: To collect acreage data on sampled townships, these data to include total acres in township (uplands and submerged lands) and total acres of submerged lands.

General Flow: Master lists (six) identify the townships sampled, which is carried through to data collection by townships from master list to tally sheet, to Master Title Plat, to data collection by section, to totals by township, to master list.

End Result: Acreage figures by township for total acres and for total submerged lands for each township on each of the six master lists. These data are then the key input to the statistical estimator.

Materials:

- Copy of assigned master list (or part thereof)
- Appropriate number of blank sample sheets for master list assigned
- Copies or some medium of the Master Title Plats of townships assigned
- Black ink pens
- Pocket calculator

A. PHASE I - DATA COLLECTION

A.1 Sequentially work with assigned master list (there are six different master lists). Note which one from the title and ensure corresponding tally sheets are for that master list.

A.2 Work through data collection one township at a time. Header information of township identifier is copied to tally sheet. Use black pen only.

A.3 Using Master Title Plat, on tally sheet note whether township is complete (36 sections) or partial. If partial specify the number of sections and then draw a line below that section number in the columns.

A.4 Tally total number of acres (uplands and water combined) for each section and tally total acres of submerged land for each section. As you procede section by section verify both figures.

A.5 Calculate totals for the township at the bottom of the tally sheet. Note: two figures required--total acres and total acres of submerged lands.

A.6 Review tally sheet for completeness and accuracy.

B. PHASE II - DATA VERIFICATION AND TRANSFER

(To be done by a person other than original
data collector.)

B.1 Working with individual tally sheets, verify header information and the two totals.

B.2 Copy necessary information to the corresponding Master List: complete/partial township with the number of sections, total acres, and total submerged lands. Use black pen only.

B.3 Verify copied information.

B.4 Make two copies of completed Master Lists.

B.5 Original Master Lists and original Tally Sheets to project manager file.

STEPS: February 12, 1987

1. Sequentially work with random numbers list using number to cross walk to township listing.

2. Find sequential number, highlight, call out Range/Township/Meridian.

3. Locate township on base map which has been registered to the terrain map (terrain map under base map).

4. Make terrain call for township. Edge calls: If the township has a boundary line between two terrain types cutting across the following decision rules apply:

   a. If the greater part of a township falls into one category the township is characterized by that category.

   b. If the township appears to be equally distributed ask for concurrence by a team member. If no clean cut call of terrain type can be made note on the random numbers list and move on to next number.

5. Enter Township descriptor on the corresponding terrain Master List and enter an M (Mountaneous), R (Rolling), F (Flat), or X (no call) on the random numbers list for the group you are working with. Highlight the number on the random numbers list, highlight the township on the listing, and mark off the township on the base map overlay.

6. Continue process until the projected sample number plus 25 have been noted for all three terrain types for State lands and the same process for Regional Corporation lands.

7. If sample number has been reached for one terrain type and another township of that terrain type comes up, note the terrain type on the random numbers list but do NOT put on the master list and do not highlight the number on the random numbers list nor on the township listing, and do not mark off on the base map.

February 12, 1987

PROCEDURE-GENERATION OF MASTER LISTS

Purpose· To identify the sample townships in order to estimate the acreage of submerged lands for State and Regional Corporations.

General Flow: Cross walk from random numbers to listing of townships of State and Regional Corporation conveyed lands to base map of townships to terrain type.

End Result: Six Master Lists of townships to collect data on submerged lands and to provide input for adjustment of sample design.

Materials:

- Listing of townships of State conveyed lands
- Listing of townships of Regional Corporation conveyed lands
- Base mylar map of State with townships
- Overlay of terrain types
- Random numbers list for state and Regional Corp. sample selection
- Original Master List forms
  - State-Mountaneous
  - State-Rolling
  - State-Flat
  - Regional Corp.-Mountaneous
  - Regional Corp.-Rolling
  - Regional Corp.-Flat
- Two highlighter pens
- Black pens for notations

March 31, 1987

SAMPLE DESIGN: STRATIFIED RANDOM SAMPLE

A random sampling technique has been designed to estimate the acreage of submerged lands within +/- 10% of the actual acreage with 95% confidence limits. This means that 95 out of 100 times that the sampling is repeated the results would be within +/- 10% of the actual submerged land acreage. The differences of the terrain characteristics and variability of submerged lands influences the sample design. The sampling is stratified to reflect these differences for both the State lands and the regional corporation lands.

STATE LANDS

Total number of townships involved = 2719

Sample:

Stratum	No. Townships
Mountainous	55
Rolling	163
Flat	57
Total Number of Townships Sampled =	275

REGIONAL CORPORATION LANDS

Total number of townships involved = 969

Samples:

Stratum	No. Townships
Mountainous	23
Rolling	81
Flat	65
Total Number of Townships Samples =	169

The total sample size for regional corporation lands is two-thirds of that for the State lands even though there are one-third the total number of townships involved. The regional corporation lands occur more in the flat terrain type which has a higher variability in acres of submerged land per township. This difference requires a greater sample size to meet the requirements of the statistical calculations.

The acreage of submerged lands for each sampled township is tallied. This information then is used to calculate the statistical estimate of total submerged land. This is done for the State lands and then repeated for the regional corporation lands. In calculating these acreage estimates the terrain types and the related variability of submerged land are factored in. The results are an estimate of total submerged land +/- 10% of the actual for the State lands and an estimate of total submerged land +/- 10% of the actual for the Regional corporation lands.

March 31, 1987

STATISTICAL ESTIMATE FOR STATE AND REGIONAL CORPORATION SUBMERGED LANDS

The basic question is how to estimate the acreage of submerged lands for those lands:

1. Patented and tentative approval for conveyance to the State of Alaska.
2. Patented, interim conveyance and subsurface in lieu selection for conveyance to regional corporations.

The State of Alaska can be divided into three types of terrain; mountainous , rolling and flat. Each terrain type has a different characteristic in the relative amount of submerged land because of the drainage patterns associated with that terrain. The mountainous terrain has the least submerged land and the variability of acreage of submerged land per township is low. The flat terrain has the most submerged land and the variability of acreage of submerged land per township is high. The rolling terrain has a moderate amount of submerged land and the variability of acreage of submerged land per township is greater than that for mountainous terrain but is less than that for flat terrain.

TERRAIN TYPE (STRATUM)	SUBMERGED LAND	VARIABILITY	COEFFICIENT OF VARIATION (from average)
Mountainous	Low	Low	1.0
Rolling	Moderate	Intermediate	1.5
Flat	High	High	2.0

In reviewing those lands for the State of Alaska and the regional corporations there is a significant difference in the terrain types involved.

STATE LANDS

Mountainous terrain	20%
Rolling terrain	60%
Flat terrain	20%

REGIONAL CORPORATION LANDS

Mountainous terrain	10%
Rolling terrain	50%
Flat terrain	40%

SUBMERGED LANDS REVIEW SUMMARY Date: ____________

Corporate Name: ______________________________

Case File No.: __________________________

Sec. 12(a) ______
Sec. 12(b) ______
Sec. 16 ______

Total Entitlement: Acres ______________

Upland acreage conveyed.
(based upon current land status
excluding submerged lands, and
Native allotments) ______________

Remaining entitlement: Acres ______________

Remaining selected upland acres
(based upon current land status
excluding submerged lands, and
Native allotments) ______________

Acreage under/over selected ______________

LIMITATIONS:	Uplands Conveyed	Uplands Remaining Selected
Valid State selection acreage	______________	______________
Refuge Acreage	______________	______________
Forest Acreage	______________	______________

Submerged lands acreage within conveyed lands ______________

Submerged lands acreage within remaining selected lands ______________

SUBMERGED LANDS REVIEW

Corporation & Village Name ______ Region ______ Serial Number ______ Entitlement ______ 12(a) ______ 12(b) ______ Date ______

			1	2	3	4	5	6	7	8	9	10	
TWP	Rge	M	Sub Lands Conveyed	Sub Lands Remaining Selected	Lands Not Available	Upland Acres Conveyed 12(a)	Upland Remaining Selected 12(a)	Upland Acres Conveyed 12(b)	Upland Remaining Selected 12(b)	Approximate Upland Acres Topfiled 12(b) over 12(a)	69,120-acre Limitation Conveyed S, R, F	69,120-acre Limitation Remaining Selected S, R, F	Remarks

DISTRIBUTION

Original letter with summary goes to village.

All work plats, forms and summary should be filed in the village withdrawal file.

Send one copy of the letter, forms and summary to our Alaska Program Staff in Washington.

Send one copy of summary to Helen Burleson.

Send one copy of summary to your Branch Chief.

Senator MURKOWSKI. Thank you, Mr. Hession. I guess, you know, one of my concerns is the matter of the justification for treating Alaska differently.

And I think the explanations which have been addressed here for the record are of substance. Although the question of fairness is really in the eyes of the beholder.

I mean, we can go back and state, from the standpoint of the public benefit, if Alaska had not received 104 million acres, or if they did, they did so at the expense of the public.

And so it is all within a matter of degrees. It is like 56 or 57 million acres of, in effect, wilderness that we have in the State of Alaska. What is reasonable, what is unreasonable?

And I think from the standpoint of the recognition of the emotional appeal, the residents naturally feel strongly that they should be treated as other states have been treated upon coming into the union.

So we are left with the dilemma before this Committee and the Congress to resolve it. I really see no point in adding anything. I think the statements made today are supportive of previous statements on the subject.

The recognition that we have taken under consideration the realization that land exchanges would require Congressional approval is certainly something that is new. I have a statement for the record, including a submission from the Alaska Federation of Natives, that will be included in the hearing record.

We will keep the hearing record open for an additional two weeks, for additional information. And Mr. Hession, if you care to put in the testimony that you indicated that you would like to have had the time to bring up, you may feel welcome to submit it for the record.

If there is nothing else, gentlemen and ladies, I would thank you for your testimony and for the contribution to this record, and wish you all a good day.

[Whereupon, at 3:57 p.m. the hearing was adjourned.]

[The statement from the Alaska Federation of Natives and additional material submitted for the record follow:]

TESTIMONY
OF
JANIE LEASK
PRESIDENT
OF THE
ALASKA FEDERATION OF NATIVES
ON H.R. 2629
BEFORE THE
SUBCOMMITTTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS
OF THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
OF THE
UNITED STATES SENATE
October 20, 1987

Mr. Chairman, members of the subcommittee, my name is Janie Leask. I am the president of the Alaska Federation of Natives (AFN). The AFN board of directors is composed of a representative of each of the thirteen regional corporations established pursuant to the Alaska Native Claims Settlement Act (ANCSA), a representative of each of the twelve Native regional nonprofit associations that provide health, housing, and related services to Alaska Natives in each geographic region described in section 7(a) of ANCSA, and twelve representatives of village corporations, and Indian Reorganization Act and traditional Native village councils. The totality of the over 60,000 Natives who reside in Alaska are shareholders of, or are represented by, AFN's member corporations and organizations. On behalf of AFN I would like to express our appreciation for the opportunity to testify in support of H.R. 2629.

H.R. 2629 contains three titles. Although AFN supports the enactment of titles II and III, both titles address issues which are unrelated to AFN's primary concern: the enactment of a fair and workable solution to the problems Native corporations have experienced with regard to the conveyance of submerged lands within their selection areas.

In that regard, the text of title I of H.R. 2629 is identical to the text of the amendment in the nature of a substitute for S. 485 which the Committee on Energy and Natural Resources reported by a unanimous vote at the end of the 99th

Congress.[1] On behalf of AFN, on August 4, 1986, I presented testimony which explained why the enactment of S. 485 was of significant importance to Alaska Natives and why the process for surveying and conveying submerged lands to Native corporations which the enactment of S. 485 would have ratified is both fair and workable.[2] The substance of that testimony is as true today as it was last year. Consequently, it need not be repeated here.

However, there are two new developments which have occurred since the 1986 hearing which should be mentioned.

The first is the opinion United States District Court Judge Laughlin Waters issued on December 6, 1986, in State of Alaska v. United States of America (Gulkana), No. A80-359 Civil, a copy of which is attached. Judge Waters held that the bed of a portion of the Gulkana River which had previously been conveyed to Ahtna, Inc., the regional corporation which represents the Ahtna Indian people who reside in the Copper River valley, was "navigable." In reaching this result, Judge Waters set forth the criteria he believes the Bureau of Land Management (BLM) and the courts must apply to determine whether a river is "navigable." Although

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[1] Senate Report No. 507, 99th Cong., 2d Sess. (1986). Although the Committee reported S. 485 by a unanimous vote, Senator Metzenbaum, who was not present at the markup, later submitted minority views opposing the bill.

[2] Hearing on S. 485 before the Subcomm. on Public Lands, Reserved Water and Resource Conservation of the Senate Comm. on Energy and Natural Resources, 99th Cong., 2d Sess. 362-378 (August 4, 1986)(statements of Janie Leask and Donald C. Mitchell). See also Hearing on H.R. 2629 before the Subcomm. on Water and Power Resources of the House Comm. on Interior and Insular Affairs (June 11, 1987)(statement of Julie Kitka, special assistant to the president of AFN).

Ahtna, Inc., has appealed the Gulkana decision, if Judge Waters is sustained on appeal, the decision will significantly affect the debate over title I of H.R. 2629.

From the outset of that debate, the environmental organizations which have opposed the enactment of title I (most notably the Sierra Club and the Wilderness Society) have argued that allowing BLM, as it does as a matter of course in the 48 coterminous states, to quit claim submerged land to Native Corporations if the land is located under a lake 50 acres or more in size or a river or stream three chains (198 feet) or more wide will somehow bestow a windfall on Native corporations, i.e., that some of the submerged land Native corporations would receive without charge to their acreage entitlements would be nonnavigable. According to the argument, conveying title to this nonnavigable submerged land pursuant to the doctrine of riparian ownership without charge to Native corporation acreage entitlements requires BLM to convey Native corporations additional acres of uplands within their selection areas (including selection areas within conservation system units) to which, but for the purported windfall, they are not otherwise entitled.

For the reasons set forth in AFN's previous testimony, this argument is patently spurious. However, if the Gulkana decision is affirmed on appeal, even the Sierra Club and the Wilderness Society must admit that, if title were to be quieted by a

United States District Court, lakes 50 acres or more in size[3] and rivers and streams three chains or more wide are navigable. If that is the case, then the number of so-called "windfall" acres Native corporations will purportedly derive from the enactment of title I of H.R. 2629 is zero.

The second development worth noting is the submerged lands bill which a group of environmental organizations have requested the subcommittee to enact as an amendment in the nature of a substitute for title I of H.R. 2629 (hereinafter "Sierra Club bill"). As a threshold matter, AFN regrets that the environmental sponsors did not think it appropriate to provide AFN a courtesy copy of the bill so that AFN could have an opportunity to analyze its contents prior to this hearing.

However, to the extent the Sierra Club bill is similar to earlier drafts of a bill which have informally circulated in Alaska and elsewhere, AFN strongly opposes the enactment of the bill as a substitute for title I of H.R. 2629. Title I ratifies BLM's use of a time-tested procedure for the survey and conveyance of the public lands. The Sierra Club bill requests Congress to order BLM to develop and implement yet another novel, untested, indeed Rube Goldbergesque, procedure whose cost has not been calculated and whose workability is dubious.

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[3] The Gulkana decision sets forth criteria for determining the navigability of the waterbody which was at issue in that proceeding, i.e., the Gulkana River. As of the date of this hearing, BLM and the Office of the Solicitor have not decided whether the Gulkana navigability criteria also apply to lakes. However, it should be noted that, as used in the Submerged Lands Act, the term "lands beneath navigable waters" does not differentiate between lands under lakes and lands under rivers and streams.

According to the version AFN has reviewed, the Sierra Club bill's solution to the submerged lands conveyance problem is to require the Governor to certify parcel-by-parcel that the State of Alaska will not challenge Native corporation title to submerged lands within a parcel. Until he does so with respect to all submerged lands within all parcels conveyed to a particular Native corporation, the corporation's overselections will be maintained so that BLM can replace lands lost as a result of successful State challenges to Native corporation title.

In addition to several other problems with this approach, the most obvious defect in the procedure the Sierra Club bill suggests is that there is no reason for a Governor to voluntarily give up the State of Alaska's right to assert its title to submerged lands at any time and in the same manner as every other state. Since the bill establishes no time limit, i.e., statute of limitations, within which a Governor must do so, if the Sierra Club bill were enacted, the practical effect would be to return Native corporations, the State of Alaska and BLM to the same situation vis-a-vis submerged lands that they were in prior to the enactment of section 901 of the Alaska National Interest Lands Conservation Act in 1980. After a decade of work to craft the fair and workable solution to the submerged lands problem embodied in title I of H.R. 2629, such a result is simply unacceptable.

Consequently, Mr. Chairman, on behalf of AFN and its member corporations, I would respectfully request that H.R. 2629 be favorably reported by the Subcommittee on Public Lands, National Parks and Forests and the Committee on Energy and Natural Resources, and expeditiously enacted into law.

Thank you.

FILED

[illegible] 1985

[illegible] COURT
[illegible] ALASKA
By [illegible] Deputy

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

STATE OF ALASKA,
Plaintiff,
v.
UNITED STATES OF AMERICA, WILLIAM CLARK, Secretary of the Interior; ROBERT PENFORD, Alaska State Director, Bureau of Land Management; AHTNA, INC., and STA-KEH CORPORATION,
Defendants.

No. A80-359 Civil (Gulkana River)

ORDER RE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and UNITED STATES' CROSS MOTION FOR JUDGMENT ON THE PLEADINGS

This is an action filed by the State of Alaska against the United States and Department of Interior officials in which **Alaska seeks**, pursuant to 28 U.S.C. §§1346(f) and 2409a, to have **the title to the** riverbed underlying the Gulkana River quieted in its favor[1]. Ahtna, Inc.[2], to whom the United States transferred purported title to the lower 30 miles of the Gulkana River, is also named as a defendant. As will be discussed in greater detail below, resolution of the parties' claims to title will turn on whether the river at issue is navigable or non-navigable. Presently pending before the court is Alaska's motion for summary judgment and the United States' cross motion for judgment on the plea[illegible]. For the reasons set forth below, the court now grants Alask[illegible] motion and denies the United States' cross motion.

Background

The Alaska Native Claims Settlement Act ("ANCSA") permits Native Alaskans to select through regional and village native corporations approximately 44 million acres of public land in Alaska in settlement of aboriginal land claims they had to lands held by the United States at the time Alaska entered the Union. See 43 U.S.C. § 1601 et seq. The Alaska Statehood Act, 48 U.S.C. § 21, permits the State of Alaska to select approximately 103.5 million acres of public land in Alaska. However, under the "equal footing doctrine," see Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 229 (1845), and its codification in the Submerged Lands Act of 1953, 43 U.S.C. § 1301 et seq., title to the beds of navigable inland waterbodies passes from the United States to the state when the state enters the Union. Utah v. United States, 403 U.S. 9, 10, 91 S.Ct. 1775, 1776, 29 L.Ed.2d 279 (1971); Bonelli Cattle Co. v. Arizona, 414 U.S. 313, 324 n.19, 94 S.Ct. 517, 525 n.19, 38 L.Ed.2d 526 (1973), overruled on other grounds, Oregon v. Corvallis Sand & Gravel Co., 429 U.S. 363, 97 S.Ct. 582, 5[illegible] L.Ed.2d 550 (1977); Oregon v. Riverfront Protection Ass'n[illegible] 672 F.2d 792, 794 (9th Cir. 1982); Alaska v. United States, 754 F.2d 851, 853 n.3 (9th Cir.), cert. denied, 106 S.Ct. 333 (1985). Because title to the beds of navigable waterbodies passed automatically to Alaska at the time of statehood, they are neither available for selection nor chargeable to either the ANCSA or the Alaska Statehood Act entitlements. See 43 U.S.C. 1602(e), 1610-1611, 1615, 1631 and 48 U.S.C. prec. § 21, Sec.

6(a) and (b). Conversely, the beds of non-navigable waterbodies are available for selection and, if selected, are chargeable against the recipient's entitlement. The United States Department of Interior is responsible for processing the State and native corporation selections and for transferring title to them. *See* 43 U.S.C. §§1611, 1613 and 48 U.S.C. prec. § 21, Sec. 6(a) and (g). In processing native corporation selections, the Bureau of Land Management ("BLM") makes administrative determinations of navigability. 43 U.S.C. §1631(b); 43 C.F.R. 2650.5-1(b) (1983); *see* *Alaska v. United States*, 754 F.2d 851, 852 n.2 (9th Cir.), *cert. denied*, 106 S.Ct. 333 (1985).

On May 16, 1979, BLM issued an administrative decision finding the lower 30 miles of the Gulkana River system non-navigable. On June 29, 1979, the United States made an interim conveyance pursuant to ANCSA of the same lower 30 miles of the Gulkana River system to Ahtna, Inc., an ANCSA regional corporation. On November 25, 1980, Alaska filed the instant suit. In its pleadings, Alaska alleged that the very possibility the United States might declare the portions of the Gulkana River not conveyed to Ahtna, Inc. non-navigable created a cloud over Alaska's title to those portions of the river. As a consequence, although the United States conveyed only the lower 30 miles of the Gulkana to Ahtna, Inc., Alaska sought by its suit to quiet title in the entirety of the Gulkana River System. In addition, Alaska sought a declaratory judgment[3], pursuant to 28 U.S.C. §2201, concerning (1) the navigability of the Gulkana River System and (2) the relevancy of the criteria applied by BLM in making navigability determinations while processing claims under ANCSA to Gulkana River System lands. Alaska has since represented to this court that in the event summary judgment was entered in its favor [illegible] the quiet title portion of the suit, Alaska would not elect to pursue the portion of the suit seeking the foregoing declaratory judgment[4]. Alaska's Reply to United States' Opposition to Alaska's Motion for Reconsideration at p. 7; Alaska's Memorandum in Support of Motion for Reconsideration at p. 6.

The United States initially contested 96.1 miles of the 239.8 miles of riverbed to which Alaska originally claimed title. However, on June 27, 1984, the United States disclaimed pursuant to 28 U.S.C. §2049a(d) interest in all but the upper reaches of the Gulkana River System.[5] This disclaimer was confirmed by the court on September 24, 1984. On March 1, 1985, the State of Alaska moved to voluntarily dismiss with prejudice any claim to the remaining upper reaches of the Gulkana River System in which the United States still claimed an interest[6]. This motion was granted on March 4, 1985. As a consequence of the United States' disclaimer and Alaska's voluntary dismissal, no concrete dispute remains between the United States and Alaska over the Gulkana River System. However, because Ahtna, Inc. did not join in the United States' disclaimer, a live controversy remains between Alaska and Ahtna, Inc. as to title to the lower 30 miles of the Gulkana River System. Ahtna, Inc. has joined in the United States' cross motion for judgment on the pleadings. Ahtna, Inc.'s Opposition to Motion for Summary Judgment at pp. 1-2 (filed June 17, 1983).

Judicial determinations of the navigability of waterbodies found by BLM pursuant to ANCSA to be non-navigable are made *de novo*. 43 U.S.C. § 1631(a); *compare* *Alaska v. Lyng*, 797 F.2d 1479

(9th Cir. 1986); Alaska v. United States, 754 F.2d 851, 855 (9th Cir.[illegible]rt. denied, 106 S.Ct. 333 (1985).

Discussion

As indicated above, resolution of the parties' claims turns on the question of whether the contested 30 miles of the Gulkana River System are "navigable" as that term is defined under federal law. The federal test for navigability was first articulated in The Daniel Ball[7], 77 U.S. (Wall.) 557, 563 (1870):

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade or travel are or may be conducted in the customary modes of trade or travel on water.

See also Utah v. United States, 403 U.S. 9, 10, 91 S.Ct. 1775, 1776, 19 L.Ed.2d 279 (1971).

This much the parties agree on. What the parties disagree about is how the Daniel Ball test should be applied. As the United States would have it, a navigability determination would be a t[illegible] step process: the first step would be to select the custom[illegible] commercial watercraft in use in Alaska at the time of statehood (the craft that would be selected is referred to by the United States in its papers as the "magic boat"), and the second step would be to examine the river to determine if it is usable by the craft. The State of Alaska, on the other hand, rejects the first step of the United States' two step process. According to Alaska, navigability is not established by identification of a "magic boat" but rather is established by determining (1) the capa[illegible] of the waterbody to be used for transportation of peopl[illegible] goods from point to point on the water; (2) whether the watercraft used or capable of being used on the waterbody are customary means of transporting people or goods; and (3) whether the use or susceptibility to use of the waterbody for transporting persons or goods existed in the natural and ordinary condition of the water on the date of statehood.

Careful examination of the positions of the United States and Alaska reveals that the difference between them stems in significant part from differing conceptions of how the Daniel Ball test meshes with the equal footing doctrine. The United States' position assumes that the fact that under the equal footing doctrine navigability "at the time of statehood" determines title means that the elements of the Daniel Ball test concerning susceptibility to use "as a highway for commerce" "in the customary modes of trade and travel" must be applied with reference to the nature of commerce and the customary modes of travel at the time of statehood. Alaska's position, on the other hand, assumes that the requirement of the equal footing doctrine that a waterway must have been navigable at the time of statehood for ti[illegible]to have passed to the state means only that changes which [illegible] occurred in the physical configuration of the waterway since the time of statehood are to be disregarded for the purpose of determining title navigability. At this stage of the analysis then the court is confronted with the question of how, if at all, the equal footing doctrine bears on application of the Daniel Ball test for title purposes.

Navigability was originally created as a legal concept for the purpose of distinguishing those portions of a waterbody which could [illegible]ivately owned from those portions which could not. See MacGrady, The Navigability Concept in the Civil and Common Law, 3 Fla. St. U.L. Rev. 511, 511-512 (1975). At common law, navigable waterbodies belonged to the sovereign who held them as a public trust while non-navigable waterbodies were subject to private ownership.[8] See, e.g., Rex v. Smith, 99 Eng. Rep. 283, 285 (K.B. 1780) ("The soil of a navigable river belongs to the King."); see also MacGrady, The Navigability Concept, 3 Fla. St. U.L. Rev. at 583-587. Despite the obvious differences between American and English notions of sovereignty, American courts adopted the English common law principle that navigable waterbodies are held by the sovereign in trust for the public.[9] In Martin v. Waddell, 41 U.S. (16 Pet.) 367 (1842), the Supreme Court found that title to navigable waterbodies in the former colonies, formerly held by the King of England in trust for the public pursuant to the common law doctrine of navigable waterbodies, was by virtue of the Revolution vested in the states. Id. at 410; accord Mumford v. Wardell, 73 U.S. (6 Wall.) 423, 436 (1867). Thus, as the legal concept of navigability was first transplanted in the original 13 colonies, no violence was done to its underlying purpose: the states stood in the position of the King, holding as a public trust the title to the beds underlying navigable waterbodies.

Other considerations unique to the American system of government came into play when applying the doctrine of title navigability to waterbodies lying outside the original 13 colonies. Under the equal footing doctrine, new states "have the same rights, sovereignty and jurisdiction . . . as the original sta[illegible] possess within their respective borders." Mumford v. Wa[illegible] 73 U.S. (6 Wall.) 423, 436 (1867); see also Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 228-229 (1845). These rights include ownership of the lands underlying the navigable waters within the state's boundaries. Pollard's Lessee, 44 U.S. (3 How.) at 229 (1845); Mumford, 73 U.S. (6 Wall.) at 436 (1867); Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 794 (9th Cir. 1982). Thus, states admitted to the Union after the Revolution, being entitled to the same rights as the original 13 states, were, like the original 13 states, entitled to the beds underlying navigable waterways. Pollard's Lessee, 44 U.S. (3 How.) at 228-229; accord Montana v. United States, 450 U.S. 544, 551, 101 S.Ct. 1245, 1251, 67 L.Ed.2d 493 (1981). In the newly admitted states, however, land not owned by the state generally was owned by the federal government. As a consequence, in the newly admitted states, the concept of navigability served the purpose of distinguishing not public from private, but rather state from federal. It is to be noted though that the public/private distinction still has relevance in the American law of title navigability. Under the Americanized version of the common law doctrine of navigability, by virtue of the rights gaine[illegible]in the Revolution and confirmed by the Constitution, it is the state, as opposed to the federal government, which holds title in public trust of "public waterbodies," and it is through application of the definition of navigability that the determination is made of which waterbodies are public and which are not.

In sum then, the purpose of the equal footing doctrine as applied to questions of title navigability is to ensure that all states are vested with the same right of safeguarding "public," that [illegible] navigable," waterbodies. However, this conclusion says nothing about *how* navigability is to be defined. On at least a theoretical level, defining navigability with reference only to the state of commerce at the time of statehood, as the United States urges this court to do, does not undermine the above described policies and purposes of the equal footing and navigability doctrines. If one were to accept the proposition that as the nature of commerce varies notions of what is "navigable" and hence "public" vary accordingly, it would follow that navigability should be determined with reference to the state of commerce at the time of statehood. The fact that each state has an equal right to the title of navigable or public waterbodies does not in and of itself compel the conclusion that the concept of what is "navigable," and hence "public," is static and non-malleable. In short, while it is clear the equal footing doctrine guarantees all states equal rights in navigable waterbodies, the doctrine does not guarantee that the concept of navigability is static and not subject to change over the years.

However, the United States fails to cite a case that supports the proposition that the elements of the *Daniel Ball* test concerning susceptibility of the waterway to use "as a highway for commerce," "in the customary modes of trade and travel" must be applied with reference to the nature of commerce and "the customary modes of trade and travel" at the time of statehood. The majority of courts which have applied the *Daniel Ball* test for the purpose of determining title, while careful to note that navigability is to be determined at the time of statehood, have not made or required specific findings with respect to the "customary mode of trade and travel" at the time of statehood. See, e.g., Utah v. United States, 403 U.S. 9, 91 S.Ct. [illegible], 19 L.Ed.2d 279 (1971); United States v. Utah, 283 U.S. 64, 51 S.Ct. 438, 75 L.Ed 844 (1931); United States v. Holt State Bank, 270 U.S. 49, 46 S.Ct. 197, 70 L.Ed. 465 (1925); Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 795 (9th Cir. 1982). There is dictum in a couple of cases which could be construed as supporting the United States' position. See North Dakota ex rel. Bd. of University and State Lands v. Andrus, 671 F.2d 271, 278 (8th Cir. 1982), rev'd on other grounds sub nom. Black v. North Dakota ex rel. Bd. of University and State Lands, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983). (". . . [W]e must bear in mind that the issue is one of potential commercial use and hence navigability at the time of statehood, not in the present day . . . .[C]anoe travel at the time of North Dakota's statehood represented a viable means of transporting persons and goods."); Alaska v. United States, 754 F.2d 851, 854 (9th Cir.), cert. denied, 106 S.Ct. 333 (1985). (". . .[W]e have liberally construed the phrase 'customary modes of trade and travel on water,' [citations omitted], taking into account transportation methods in use at the time of statehood.") These cases, however, hold nothing more than that the "customary modes of trade and travel" at the time of statehood are relevant to the determination of title navigability. The cases do not hold, as the United States here contends, that a determination of title navigability depends exclusively on the customary modes of trade and travel in use at the time of statehood.

The case which sheds the most light on the relationship between the equal footing doctrine and the Daniel Ball title navigability test is United States v. Utah, 283 U.S. 64, 51 S.Ct. 438, 75 L.Ed. 844 (1931). There, the United States had brought a quiet title action against the State of Utah claiming that portions of the Green, Grand and Colorado rivers were non-navigable. In taking exception to certain findings of navigability made by a special master, the United States argued that the absence of historical evidence of actual use by Indians, fur traders, or early explorers was "weighty evidence" of non-navigability. Noting that the region at issue was unexplored at the time of statehood, the Supreme Court rejected this argument on the ground that a title navigability determination cannot be made to depend upon the relative development or lack of development of a state at the time of its admission to the Union:

> It is true that the region through which the rivers flow is sparsely settled . . . . In view of past conditions, the government urges that the consideration of future commerce is too speculative to be entertained. Rather it is true that, as the title of a state depends upon the issue, the possibilities of growth and future profitable use are not to be ignored. Utah, with its equality of right as a state of the Union, is not to be denied title to the beds of such of its rivers as were navigable in fact at the time of the admission of the state either because the location of the rivers and the circumstances of the exploration and settlement of

> the country through which they flowed had made recourse to navigation a late adventure or because commercial utilization on a large scale awaits future demands. The question remains one of fact as to the capacity of the rivers in their ordinary condition to meet the needs of commerce as these may arise in connection with the growth of the population, the multiplication of activities, and the development of natural resources. And this capacity may be shown by physical characteristics and experimentation as well as by the uses to which the streams have been put.

United States v. Utah, 283 U.S. 64, 83, 51 S.Ct. 438, 443-44, 75 L.Ed. 844 (1931).

The holding of the Supreme Court that a state's "equality of right as a state of the Union" is not to be denied because of the state's under-development at the time of statehood undermines the United States' contention that the determination of navigability is limited by "the customary mode of commerce" at the time of statehood. If a state's "equality of right as a state of the Union" is not to be denied because of a state's relative under-development at the time of statehood and if "the question [of title navigability] remains one of fact as to the capacity of the rivers in their ordinary condition to meet the needs of commerce as these may arise," (emphasis added), it necessarily follows then that neither the extent nor the nature of commerce in the region at the time of statehood is relevant. Rather, it appears that the Supreme Court in United States v. Utah approached the problem of title navigability with fixed, if unstated, concepts of "commerce" and "ordinary modes of commerce" and simply held that those concepts of "commerce" and "ordinary modes of commerce" were to be applied to the river at issue without regard to the extent or nature of actual past or present commercial development in the region surrounding the river.

It must be noted that the Supreme Court in United States v. Utah found only that lack of actual navigation at the time of statehood on a waterbody due to the economic under-development of the region surrounding the waterbody is not evidence of non-navigability; the Supreme Court did not directly address the theoretical possibility that a state's right to the title to beds of navigable waterbodies is itself a relative right which varies according to existing concepts of what constitutes commerce, navigability and publicness. However, to the extent that the Supreme Court did not in United States v. Utah reject the application of this malleable concept of navigability in making title navigability determinations, this court, for the reasons set forth below, does.

On a purely theoretical level, the notion that as concepts of what constitutes commerce vary concepts of what is "navigable" vary accordingly has a certain appeal. As a practical matter, however, if such a malleable definition were given to the concept of navigability, the navigability or non-navigability of waterbodies, and hence title to those waterbodies, would be in constant flux. This would plainly be an untenable result. It might be argued that this problem could be solved by permanently fixing title according to the navigability of the waterbody at the time of statehood. However, by making title a constant while at the same time using a malleable definition of navigability, and hence of title itself, an equally untenable situation results: as the nature of commerce and navigability changed, states would be found to have title to non-navigable waterways and without title to navigable waterways. This is, of course, contrary to what the law provides. Thus, as a purely practical matter, it does not make sense to fix title according to prevailing modes of conducting commerce at the time of statehood.

Thus, although there is little authority directly on point, the inference to be drawn from existing authority is clearly that the admonition of the equal footing doctrine that title is to be determined at the time of statehood does not mean that the "usual mode of commerce" element of the Daniel Ball test must be applied with reference to how commerce was conducted at the time of statehood. In addition, if the malleable, relativist concept of navigability urged by the United States were adopted, title to waterbodies could not be kept constant without undermining the well established principle that the states hold title to the beds underlying navigable waterbodies. This court consequently concludes that the requirement that title navigability be determined at the time of statehood means only that when making a title navigability determination, the Daniel Ball test is to be applied to the physical dimensions and configuration of the river existing at the time of statehood.

Having concluded that the "commerce" and "ordinary modes of trade and travel" elements of the Daniel Ball test need not be construed with reference only to the "commerce" and "ordinary modes of trade and travel" in existence at the time of statehood, the court is left with the question of how those elements of the

Daniel Ball test are to be defined and applied in a given case. Alaska advances in the alternative three independent arguments concerning the application and definition of the commerce element of the test. Alaska's first argument is that the term "commerce" no longer has any application in title navigability determinations. As a fall back position, Alaska argues that commerce is not limited to "freight-hauling" activities, but rather encompasses activities such as fishing, camping, sightseeing, trapping, hunting and governmental activities. As a final alternative, Alaska argues that even if the foregoing non "freight-hauling" activities are not commerce, they constitute relevant evidence of a waterbody's susceptibility to bearing traditional forms of commerce. The United States does not dispute the validity of this third argument, nor does the court. United States v. Utah, 283 U.S. 64, 82-83, 51 S.Ct. 438, 443-444, 75 L.Ed. 844 (1931); Utah v. United States, 403 U.S. 9, 11, 91 S.Ct. 1775, 1776, 19 L.Ed.2d 279 (1971). The United States does dispute the first two arguments advanced by Alaska and those arguments will be addressed in turn.

Alaska contends that the key element of the federal title navigability test is not that the waterbody at issue be susceptible to commercial use, but rather that it be susceptible to utilization as a transportation route. At first glance, Alaska's position would seem to be contrary to all existing law. Indeed, the well established federal title navigability test explicitly provides that a waterbody is navigable if it is susceptible to being used as a "highway for commerce," and courts have consistently cited and applied this commercial use requirement when making title navigability determinations.

Nevertheless, the court finds substantial merit in Alaska's position. It is to be noted that the federal test essentially equates the use of a waterbody for transportation and as a "highway for commerce": ". . . as a highway for commerce, over which . . . trade or travel may be conducted. . . ." (emphasis added). This implicit equation between routes for travel and routes for conducting commerce comports with common sense notions of what is required to conduct commerce by means of a waterbody. It is difficult to imagine a situation in which a waterbody is susceptible to use as a transportation route yet not susceptible to use as a highway for commerce. The reverse situation, on the other hand, is not difficult to imagine and indeed is probably always the case: where a waterbody is not susceptible to use as a transportation route, it is highly unlikely that the waterbody is susceptible to use as a highway for commerce. As a practical matter then, requiring only that a waterbody be susceptible to use as a transportation route would rarely, if ever, alter the result of a given application of the Daniel Ball test. Although this court would not go so far as to hold that susceptibility to use as a highway for commerce is no longer required under the federal title navigability test, it appears to the court that the travel requirement ordinarily subsumes the commerce requirement and that as a consequence, the travel requirement is indeed "the essence of the federal test." Utah v. United States, 403 U.S. 9, 11, 91 S.Ct. 1775, 1776, 29 L.Ed.2d 279 (1971).

This analysis is supported by the facts and holding of the Supreme Court in Utah v. United States, 403 U.S. 9, 91 S.Ct. 1775, 29 L.Ed.2d 279 (1971). There the United States contested a finding by a special master that the Great Salt Lake was navigable. The special master had found that the lake had been used by ranchers to transport livestock by boat from the mainland to an island in the lake. The United States contended that use of the waterbody for ranching was not evidence of commercial use. Rejecting this argument, the Supreme Court found that the feature which distinguishes between navigability and non-navigability is use of the waterbody as a "highway" and that the purpose for which travel is conducted on the waterbody is "an irrelevant detail":

> "The hauling apparently was done by the owners of the livestock, not by a carrier for the purpose of making money. Hence it is suggested that this was not use of the lake as a navigable highway in the customary sense of the word. . . . We think that is an irrelevant detail. The lake was used as a highway and that is the gist of the federal test."

403 U.S. at 11, 91 S.Ct. at 1776.

Likewise here, the court finds that the paramount consideration in applying the Daniel Ball test is whether the waterbody at issue is susceptible to use as a route for transportation.

By emphasizing the susceptibility of a waterbody to being used as a transportation route when applying the title navigability test, difficult questions regarding how the "commerce" element of the title test is to be applied are resolved in a manner which is both sensible and consistent with the policy considerations underlying the title navigability test. The nature of commerce and the manner in which it is conducted varies substantially from historical period to historical period and from geographical region to geographical region. As a consequence, emphasis of the "commerce" element of the title navigability test would lead to widely varying results depending on where and when the title test was applied. This, as demonstrated above, is an undesirable result because it would undermine the stability of title determinations as well as the equality of the states' right to hold the title in public trust. By emphasizing the capability of the waterbody to serve as a route for transportation, these problems are avoided. Regardless of region or historical period, craft capable of providing transportation must be of a certain minimum size. Assuming, as this court does, that a waterbody capable of serving as a transportation route is in the ordinary case also susceptible to use as a highway for commerce, the task then of a court in applying the "highway for commerce" element of the Daniel Ball test is much simplified. When determining the title navigability of a waterbody in this manner a court need not specifically concern itself with when and how commerce has or could be conducted in the region surrounding the waterbody; rather the court need only inquire if the waterbody is susceptible to the most basic form of commercial use: the transportation of people or goods.

The effect of equating a waterbody's susceptibility to use a transportation route and its susceptibility to use as a "highway for commerce" is to define commerce in its most elemental form and disregard the regional and historical variations in the manner in which it is conducted. There is nothing, however, in the historical development of the title navigability test that indicates that navigability should depend on the regional and historical characteristics of the commerce conducted in the area surrounding the waterbody. As pointed out above, the concept of navigability was developed to distinguish that which can be privately owned from that which is to be held in public trust by the sovereign. Underlying the use of the concept of navigability to distinguish between public and private is the notion that large waterbodies subject to commercial exploitation should be kept public while waterbodies so small as to not be useful for commercial transportation are suitable for private ownership. MacGrady, The Navigability Concept in the Civil and Common Law, 3 Fla. St. U.L. Rev. 511, 574-575 (1975). This policy, however, is not served by declaring a waterbody capable of transporting goods non-navigable simply because commerce in the region at that time is customarily conducted in vessels too large for the waterbody. See, e.g., The Montello, 87 U.S. (20 Wall.) 430, 441 (1874) ("[i]t would be a narrrow rule to hold that . . . unless a river was capable of being navigated by steam or sail vessels, it could not be treated as a public highway."). This is undoubtedly why the Daniel Ball test provides that a waterbody need only be "susceptible" to use as a highway for commerce. As pointed out above, when a waterbody is susceptible to use as a conduit for transportation of any substantial sort, it generally will also be susceptible to use as a highway for commerce.

Alaska's second argument, is, as indicated above, that "commerce" is not limited to freight hauling activities, but rather encompasses activities such as fishing, camping, sightseeing, trapping, hunting and governmental activities such as surveying and enforcement of gaming laws. As the court understands it, Alaska's argument here is not that these are activities which when conducted on a waterbody are evidence of commercial use of the waterbody. Rather, it appears that Alaska is arguing that utilization of a waterbody as an artery of transportation for the purpose of conducting these activities constitutes use of the waterbody as a "highway for commerce." So construing Alaska's argument, the analysis applied by the court with respect to Alaska's first argument is equally applicable here: when a waterbody is susceptible to being used as a route for transporting people or goods, it generally will also be susceptible to use as a "highway for commerce." Again, in the court's view, in the ordinary case there is no material difference between susceptibility to use as a route of transportation and susceptibility to use as a "highway for commerce." As a consequence, it is unnecessary for the court to decide if utilization of a waterbody as an artery of transportation for the purpose of reaching fishing, trapping or gaming sports is actual use of the waterbody as a "highway for commerce" or merely evidence of the waterbody's susceptibility to use as a "highway for commerce"; where a waterbody is used as a transportation route, for whatever purpose, ordinarily the waterbody will also be susceptible to use as a highway for commerce. As is well established, susceptibility of a waterbody to use as a highway for commerce in the absence of actual use as a highway for commerce suffices to establish navigability. United States v. Utah, 283 U.S. 64, 83, 51 S.Ct. 438, 443-444, 75 L.Ed. 844 (1931). The court does note, however, that when a waterbody is utilized as a means of transportation for conducting some of the activities referred to in Alaska's second argument there may be instances when there is no longer an essential equivalence between use of the waterbody as a route of transportation and the susceptibility of the waterbody to use as a "highway for commerce." It is easy, for example, to imagine a situation in which a fishing or trapping site near a waterbody could be reached only with a single person kayak. Because it is doubtful whether commerce can be conducted in a single person kayak, the fact that the waterbody was used as a highway for reaching the fishing or trapping spot might not necessarily support a finding that the waterbody was susceptible to use as a highway for commerce. In such a case, it would then be necessary to decide the issue of whether utilization of a waterbody as a "highway for reaching fishing spots" is the equivalent of utilization of the waterbody as a highway for commerce. The facts of this case are not such that the court need decide this issue.

In sum then, the title navigability of a particular waterbody is not dependent on the nature of commerce conducted in the region surrounding the waterbody at a given time. A waterbody which is capable of transporting people or goods will in the ordinary case also be susceptible to use as a "highway for commerce." With these precepts in mind, the court now turns to the facts of this case.

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Ahtna, Inc. and Alaska have entered into extensive stipulations of fact concerning the physical configuration of the portion of the Gulkana River here at issue and the uses to which it has been put[10]. These factual stipulations provide more than a sufficient basis for applying the legal principles the court has concluded to be applicable in this case. Consequently, resolution of this case on the cross motions before the court is appropriate. See Oregon v. Riverfront Protection Ass'n., 672

F.2d 792, 794 (9th Cir. 1982).

In view of the stipulated facts, there is no question that the portion of the Gulkana River here at issue (hereinafter the court will refer to the portion of the river at issue as simply "the river" or "the Gulkana") is capable of transporting people and goods and consequently is "susceptible to use as a highway for commerce." Much of the river is ordinarily slow moving and 3-6 feet deep and about 150 feet wide. Other areas are characterized by unbroken, comparatively fast running (2-3 m.p.h.) waters 2-4 feet deep under average conditions. These stretches are interrupted by shorter segments of alternating riffles and pools. In a three mile stretch between points 7.5 miles and 10.5 miles above the river's confluence with the Copper River there are segments ranging from just a few feet to a couple hundred feet in length which contain standing waves up to three feet high, capable of swamping an open canoe in places and requiring maneuvering to avoid. These waves are no obstacle to other more stable watercraft such as riverboats and inflatable rafts which are larger and wider than canoes.

The shallowest spot reported is a gravel shoal area a couple hundred feet long located about a quarter mile above the Richardson Highway Bridge (3.75 miles above the Gulkana's confluence with the Copper River) crossing the Gulkana River. At this spot the water depth is normally about a foot and a half deep, and it can drop down to a foot during low water conditions which sometimes occur after mid-July. Just below the Richardson Highway Bridge, there is another gravel shoal maybe 50 feet long where the deepest channel, to the right side of the river heading downstream, is normally about two feet deep. The water level at this spot sometimes drops to 16-18 inches after mid-July and at times drops another 3 to 4 inches in late August or September. Below this point the entire river slows and is several feet deep as it approaches its confluence with the Copper River.

There could be some question as to whether the river is navigable in its shallowest spot, that is, the couple of hundred feet stretch above the Richardson Highway Bridge where the water is normally only a foot and a half deep and at times only a foot deep[11]. This stretch, however, is very short and neither the United States nor Ahtna, Inc. has produced any evidence that navigation over this stretch is not possible. Moreover, it is well established that "navigability, in the sense of the law, is not destroyed because the watercourse is interrupted by occasionally natural obstructions or portages." Economy Light & Power Co. v. United States, 256 U.S. 113, 122, 41 S.Ct. 409, 412, 65 L.Ed. 847 (1921); accord North Dakota ex rel. Bd. of University and School Lands v. Andrus, 671 F.2d 271, 277 (8th Cir. 1982), rev'd on other grounds sub nom. Block v. North Dakota ex rel. Bd. of University and School Lands, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983); United States v. Utah, 283 U.S. 64, 86-87, 51 S.Ct. 438, 444-445, 75 L.Ed. 844 (1931); see United States v. Holt State Bank, 270 U.S. 49, 56-57, 46 S.Ct. 197, 199-200, 70 L.Ed. 465 (1925) (waterbody at issue found navigable despite difficulties to navigation posed by sand bars and vegetation); Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 795 (9th Cir. 1982) (portion of McKenzie river found navigable as a matter of law despite fact that portion of river at issue at times had exposed gravel bars, boulders and shoals). Thus, even assuming that navigation of the short stretch of shallow water above the Richardson Highway Bridge might be difficult, the impediment to navigation posed by the stretch is not of sufficient magnitude to compel a finding that the river is non-navigable.

Any concern that any segment of the river is non-navigable is put to rest by the evidence concerning the various uses that have actually been made of the river. The first reported use[12] of this section the Gulkana River is one told by Ahtna Natives of a short-statured Gulkana area chief who traded copper for furs with the Tanana people at Isabel Pass (9 miles north of Paxson Lake), had the furs loaded into Native boats, and then transported them down the Gulkana River to a village for redistribution to other Ahtna groups in the Copper River Valley The village was reportedly located at the combined mouths of Bear Creek and the Gulkana River, about 2.3 miles above the river's confluence with the Copper River. This story, set in the late 1700's or early 1800's, is not documented, but is considered historical by the Ahtna who tell it. It is known that for the period of the story the Ahtna villages and hunting camps within the Gulkana River drainage, that inter-tribal trade existed between the Ahtna and other native groups, and that the commonly shared Ahtna technology included canoe-type craft constructed of birch bark or animal skins sewn together over a wooden frame. These crafts were customarily about 17 feet long, 4 feet wide and 2 feet deep. The craft were primarily used for down stream travel.

Today watercraft are commonly used within this 30 mile section of river in connection with the fishing and camping activities which take place within the river corridor. Travel on this section is most frequently between the Sourdough Campground (33 miles above the confluence of the River with the Copper River) and the Richardson Highway Bridge, which provide access to the river by road. Use of watercraft between the bridge and the confluence of the river with the Copper River is also prevalent. These river stretches are customarily used, and susceptible to use, by the following craft: (1) powered square-sterned flat-bottomed riverboats and skiffs and V-nosed round bottomed lake boats, most commonly constructed of aluminum but also fiberglass or wood, between 16 to 24 feet long by 4 to 10 feet wide, capable of carrying loads ranging between 900 and 2,000 pounds on the river, with the draft for the metal boats of this type commonly running between 3-6 inches unloaded and 2-4 inches more when loaded to capacity and sitting still in the water, and powered by contemporary jet units, large outboard propeller motors or air propeller engines which can reduce or increase the real draft of the boat once under power; (2) inflatable rafts most commonly ranging between 12 and 15 1/2 feet long and 5 to 7 feet wide, with a river load capacity between 1,250-2,000 pounds and a draft of 6-8 inches when loaded to capacity, and used almost exclusively for downstream travel using rowing frames and oars; (3) square-sterned motorized freight canoes and double-ended paddle canoes 15 to 19 feet long, of the type earlier described.

Most travel within this section is by recreationalists in their own craft to reach fishing and camping spots on the river between the mouth and Sourdough. Traffic is most pronounced during mid-June through July, while the salmon are running in the river. During a busy weekend day between a dozen and 20 boats carrying 60 or so people are commonly in use within this section. Powerboats are the craft most commonly used, followed by inflatable rafts and canoes.

Facts in addition to the above are stipulated to by Alaska and Ahtna, Inc. It is not necessary, however, to reiterate those additional facts because the facts already recited are more than sufficient to support a finding that the portion of the Gulkana River here at issue is susceptible to use as a highway for commerce, over which trade or travel may be conducted in the customary modes of trade or travel on water[13]. Accordingly, the court, finding the lower 30 miles of the Gulkana River to be navigable as a matter of law, hereby GRANTS the State of Alaska's motion for summary judgment and DENIES the United States' cross motion for judgment on the pleadings.

IT IS SO ORDERED.

DATED: 9 Dec 86

LAUGHLIN E. WATERS
Sr. United States District Judge

cc: Michael Sewright AAG
Robert Goldberg
U.S. Attorney
Douglas Baily (BAILY)

FOOTNOTES

1. The Court has jurisdiction over this suit pursuant to 28 U.S.C. §§ 1331, 1346(a)(2), 1346(f), 1361, 2409a and 43 U.S.C. § 1631(a). Congress has waived sovereign immunity for this type of suit. North Dakota ex rel. Bd. of Univ. & School Lands v. Andrus, 671 F.2d 271, 273-274 (8th Cir. 1982), rev'd on other grounds sub nom. Block v. North Dakota ex rel. Bd. of Univ. & School Lands, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983).

2. As is discussed infra, Ahtna, Inc. is a regional corporation organized under the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601 et seq., and occupies the area in which the disputed portion of the Gulkana River is located. Sta-Keh Corporation, a village corporation organized under ANCSA, was also a transferee of the title conveyed by the United States and is also named as a defendant in this suit. However, Sta-Keh Corporation and Ahtna, Inc. have since merged, with Ahtna, Inc. being the surviving corporation and successor in interest to Sta-Keh Corporation. Answer of Ahtna, Inc., paragraph VII.

3. Alaska also seeks a permanent injunction prohibiting the federal defendants from "patenting, conveying, transferring title to, or otherwise disposing of any land, or interest in land, underlying any part of the Gulkana and connected lakes." Second Amended Complaint, paragraph 5, at p. 12.

4. Because the declaratory judgment portion of Alaska's suit is not before the Court on these motions, the Court expresses no opinion as to the merits of the request for a declaratory judgment.

5. The United States, however, maintains that it has not conceded the navigability of the portion of the river in which it has disclaimed interest. Status Report of United States, filed January 9, 1986.

6. Alaska had previously withdrawn its claim to a very small portion of the Gulkana. See Alaska's Withdrawal of Claim, filed February 14, 1986.

7. Under federal law, there are three instances in which the "navigability" of a waterway must be determined: (1) to establish the parameters of the admiralty jurisdiction of a federal court, The Montello, 87 U.S. (20 Wall.) 438 (1874); (2) to define the scope of federal regulatory jurisdiction

conferred by authority of the commerce clause, United States v. Appalachian Electric Power Co., 311 U.S. 377, 61 S.Ct. 291, 85 L.Ed. 243 (1940); Puget Sound Power & Light Co. v. Federal Energy Regulatory Comm'n., 644 F.2d 785 (9th Cir.), cert. denied, 454 U.S. 1053, 102 S.Ct. 596, 70 L.Ed.2d 588 (1981); Gibbons v. Ogden, 22 U.S. (Wheat) 1 (1824); and (3) to establish title to the waterbed underlying an inland waterway. Martin v. Wadell, 41 U.S. (16 Pet.) 234 (1842).

The Daniel Ball concerned the parameters of admiralty jurisdiction, not title to the beds of inland waterways. Nevertheless, because the Supreme Court has consistently employed the Daniel Ball test in determining "navigability for title," see, e.g., Utah v. United States, 403 U.S. 9, 91 S.Ct. 1775, 29 L.Ed.2d 279 (1971); United States v. Oregon, 295 U.S. 1, 55 S.Ct. 610, 79 L.Ed. 1267 (1935); United States v. Utah, 283 U.S. 64, 51 S.Ct. 438, 75 L.Ed. 844 (1931), it is well settled that that test applies in title navigability cases. Alaska v. United States, 754 F.2d 851, 853 (9th Cir.), cert. denied, 106 S.Ct. 333 (1985); Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 794 (9th Cir. 1982).

8. There is, however, debate as to whether the Crown owned only the beds of waterbodies subject to the "ebb and flow of the tide" or if instead the Crown owned the bed of navigable waterbodies regardless of whether the waterbody was subject to the ebb and flow of the tide. See MacGrady, The Navigability Concept, 3 Fla. St. U.L. Rev. at 569-587. In the Ninteenth century, American and English courts concluded that in England there are no waterbodies beyond the ebb and flow of the tide large enough to be navigable and that as a consequence in England navigable waterbodies and waterbodies subject to the ebb and flow of the tide were co-extensive. The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443, 454-455 (1851); Murphy v. Ryan, 2 Ir. R.C.L. 143, 151-153 (1868); The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870). By so concluding, previous cases which held that the Crown held title to the beds of navigable waterbodies were reconciled with cases which had found that the Crown held title only to the beds of tidewaters. The court would note that the assertion that in England there are no waterbodies beyond those subject to the ebb and flow of the tide which are large enough to be navigable seems implausible. See MacGrady, The Navigability Concept, 3 Fla. St. U.L. Rev. at 571. This, however, is a problem of the English law of title navigability, not the American law of title navigability, because under American law, navigable waterbodies are not limited to those subject to the ebb and flow of the tide. The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870); see infra note 9.

9. American courts did not, however, adopt the English definition of navigability, which requires that the waterbody be subject to the ebb and flow of the sea. See note 8, supra; The Daniel Ball, 77 U.S. (10 Wall.) 557, 563

(1870). American courts declined to adopt the English tidewater test based on the perception that whereas in England no navigable waterbodies were to be found in inland areas unaffected by the tide of the sea, see supra, note 8, in the United States "rivers are as navigable for many hundreds of miles above as they are below the limits of tidewater, and some of them are navigable for great distances . . . which are not even affected by the tide at any point during their entire length." The Daniel Ball, 77 U.S. (10 Wall.) at 563; see also The Propeller Genesee Chief v. Fitzhugh, 53 U.S. (12 How.) 443, 454-457 (1851). Thus, the differences between the English and American definitions of navigability stem from perceived differences between American and English geography, and not from differing perceptions as to the legal purpose of the concept of navigability.

10. While the United States has not joined in this stipulation, it has represented to the court that it is "willing" to do so. United States' Opposition to Alaska's Motion for Reconsideration at p. 7. Whether the United States does or does not join in the stipulation is not crucial, however, because the United States has disclaimed interest in the portion of the Gulkana here at issue. See supra, at p. 4. The defendant with the concrete interest in the lower 30 miles of the Gulkana, Ahtna, Inc., has, as indicated above, joined in the stipulation.

11. It is axiomatic that navigability is a question of fact, The Daniel Ball, 77 U.S. (10 Wall.) 557, 563 (1870), and that as a consequence analogies to other waterways found to be navigable are not always helpful. Nevertheless, the court would note that even the most difficult passage of the portion of the Gulkana at issue here compares favorably with waterbodies found to be navigable in other cases. See, e.g., North Dakota ex rel. Bd. of Univ. & School Lands v. Andrus, 671 F.2d 271 (8th Cir. 1982), rev'd on other grounds sub nom. Block v. North Dakota ex rel. Bd. of Univ. & School Lands, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983) (Little Missouri River found navigable despite report that maximum depth of river was two and one-half feet).

12. Ahtna, Inc. and Alaska have stipulated that the "natural and ordinary condition of the [Gulkana Rivers System] is the same now as it was at statehood in terms of location and general physical characteristics such as water volume, gradients, geology and general weather and water level conditions." Stipulation of Facts, filed November 21, 1984, at p. 8. There is nothing in the record to indicate that the physical characteristics of the Gulkana were at any time prior to statehood significantly different than they are at present. As a consequence, when considering evidence of actual use of the Gulkana in determining whether the Gulkana was susceptible at the time of statehood to use as a "highway for commerce," it is irrelevant when the actual use

occurred. Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 795 (9th Cir. 1982); see Utah v. United States, 403 U.S. 9, 9-10, 91 S.Ct. 1775, 1776, 29 L.Ed.2d 279 (1971); United States v. Utah, 283 U.S. 64, 82, 51 S.Ct. 438, 443-444, 75 L.Ed. 844 (1931).

13. The Gulkana is frozen over approximately six months out of the year. Stipulation of Facts, filed November 21, 1984, at p. 7. However, it is well established that climatic changes rendering a waterbody non-navigable on a seasonal basis do not preclude a finding of overall navigability. Oregon v. Riverfront Protection Ass'n., 672 F.2d 792, 795 (9th Cir. 1982); North Dakota ex rel. Bd. of Univ. & School Lands v. Andrus, 671 F.2d 271, 277-278 (8th Cir. 1982) rev'd on other grounds sub nom. Block v. North Dakota ex rel. Bd. of Univ. & School Lands, 461 U.S. 273, 103 S.Ct. 1811, 75 L.Ed.2d 840 (1983). Thus, in light of the above finding that the Gulkana is navigable when not frozen over, it is not necessary for the Court to decide whether evidence of ice use can be admitted to prove navigability. The court would observe, however, that the holding of the Ninth Circuit in Alaska v. United States, 754 F.2d 851 (9th Cir.), cert. denied, 106 S.Ct. 333 (1985) would appear to preclude admission of evidence of ice use.

Bruce Bowler
LAWYER
1111 Shaw Mountain Rd Boise, Idaho 83712 (208) 342-0352

November 2, 1987

Hon. J Bennett Johnston, USS, Chairman
Senate Sub-Committee for Parks and Public Lands
Senate Office Building
Washington D.C. 20510

Re: Proposed Hagerman Fossils National Monument
in Southern Idaho

Dear Senator Johnston:

Please include this in your hearing record in support of National Monument status for the Hagerman Fossils to be managed by the National Park Service. I am personally familiar with the area and feel that national attention to this unique paleontalogic treasure is long overdue.

I join in the testimony of Paul Fritz dated October 17, 1987 in your record, with copy enclosed for your convenience, which clearly states the case, and know him to be a competent authority on the subject of such National Monument which would certainly be in the national public interest in furthurance of our quality culture.

Many thanks for favorable consideration.

Respectfully yours

Bruce Bowler

Bruce Bowler

B-B
enc.
cc: Hon. James Mclure USS
Hon. Steve Symms USS
Hon. Larry Craig MC
Hon. Richard Stallings MC
Hon. Cecil Andrus Governor
Hon. Don Hodel Secretary of Interior

American Wilderness Alliance

Box 1772
Boise, Idaho 8370
October 17, 1987

Chairman, Senate Sub-Committee
for Parks and Public Lands
Senate Office Building
Washington, D.C. 20510

RECEIVED OCT 19 19

Dear Senator Johnston:

As the Idaho representative for the American Wilderness Alliance I wish to comment on the proposed Hagerman Fossils National Monument in southern Idaho.

The American Wilderness Alliance is a national western-based non-profit organization, whose members are dedicated, to protecting and promoting the conservation and wise use of our natural resources. We believe that national monuments serve the visiting public in their goals of protecting, preserving, and interpreting nationally significant scenic, scientific, educationa and historical resources.

We support the establishment of the Hagerman Fossils National Monument, to be managed by the National Park Service. The Hagerman Fossils are of world significance to the field of paleontology and the evolution of prehistoric environments of North America. Its Pliocene fauna sites are known to be the largest of its kind in the world, and can be properly protected and interpreted by the National Park Service. This federal agency has the expertise, knowledge and proven background record to accomplish it with proper funding. The area should be protecte and maintained with on-site management, overlooks, visitor center, trails, quarry building and interpretive devices.

Working Together To
Conserve Wild America

(continued)

Page 2
AWA, P. Fritz
October 17, 1987

The Hagerman Valley site also includes other nationally significant resources, namely the historic Oregon Trail and the prime location of Catastrophic Late Pleistocene Bonneville Flood (about 15,000 years ago). Both are located within the boundary of the area proposed by Senator McClure's legislation.

There may be a need to purchase private lands for future development on the east side of the Snake River and also private lands that are being irrigated west of the boundary, Irrigation runoff may eventually destroy the fossils, causing landslides, exposure to the elements and erosion. Donations for funding private land purchases and enlisting organizations like The Nature Conservancy and The Trust for Public Lands to assist in rounding out this endeavor will especially be encouraged. There are some known willing sellers in the Bell Rapids tract.

Please place this statement in the hearing record for a Hagerman Fossils National Monument. Thank you.

Sincerely,

Paul Fritz

Paul Fritz
Idaho Representative
American Wilderness Alliance
Box 1772
Boise, Idaho 83701

Canyon is across Snake River from
Hagerman fossil beds.   ch

FROM THE DESK OF

Cactus Pete's NEWS

Hotel & Casino • P.O. Box 528 • Jackpot, NV 89825

Carl Hayden

"Malad Canyon in Gooding County, Ida., appears to possess national significance in illustrating the natural heritage of the United States."

So writes Charles H. Odegard, Seattle, Wash., Regional Director, National Park Service which is under the United States Department of Interior, to Carl Hayden, scribe for Cactus Pete's Casino in Jackpot, Nev., who owns property therein.

Since it is a narrow ravine through a bygone lava flow the canyon could more specifically be called a gorge.

"The area has been identified as a potential National Natural Landmark by the National Park Service in accordance with provisions of the final procedures for the National Natural Landmarks Program," Mr. Odegard cites.

"The NNL program seeds to identify and designate areas containing ecological and/or geological features which have been determined to be of national significance.

"Potential natural landmarks are identified through studies conducted by the National Park Service, evaluated by natural scientists, and, if deemed nationally significant, could be registered as National Natural Landmarks by the Secretary of the Interior."

"Property owners who agree to adopt conservation practices in use, management and protectiveness, may formally register with the National Registry of National Landmarks."

An enclosure describes the canyon (Webster interprets a canyon as a narrow gorge with steep walls, allaying my third paragraph contentions) as within the Western Snake River Plain occupied by Big Wood River which confluences with the greatly bigger Snake River three miles downstream from the small town of Hagerman, Ida.

Early trappers called lower end of the Wood the Malad. The Malad gushes from the bottom of a lava wall at the upper end of the gorge.

Then confluences with the Wood which hosts Malad State Park near Tuttle, Park's headquarters are on the Wood.

Can't figure it out.

Anyway, bygone documents certify the Malad as the shortest single source river in the world, emptying into the Snake within 1 1/2 miles.

There are two other Malads in Idaho; one in Northern Idaho, the other against the Utah border not far from Downey.

Why so many?

Named by French trappers to warn those who followed not to eat the tails of beaver caught in those streams because they would cause illness (French: Malade).

States the NRNL, "The 1,497 acre Malad Canyon contains an excellent example of an underfit, formed during the Pleistocene by cataract retreat resulting from an ancestral river much larger than the current Big Wood flowing though the canyon.

"Formation of the canyon not only reveals in its walls the sequence of basaltic lava flows composing the surrounding portion of the Snake River Plain, but also exposes the dramatic evidence for the tremendous volume of water transmitted through the lava flows as one of the largest spring systems in the United States or the world.

"After primary erosion of the canyon, great blocks of basalt were undercut and slumped into the gap where soft lakebed deposits beneath them eroded.

"Portions of the landmark also contain superior examples of box canyon ecological communities."

Walls of the Malad Canyon spout many springs, being one of the principal discharge areas of the Snake River Plain aquifer (Aquifer reaches up the Snake to Egin Bench on its north fork, 300 miles. An aquifer is an underground reservoir).

Combined flow of the canyon's springs is between 34 and 36.8 cubic meters (1,200 and 1,300 cubic feet) per second.

They comprise one of the great spring sets on the entire globe.

The waters harbor rare endemic species of sculpins (Cottus Leiopomus and Cottus Greenei).

Spectacular lichen, bryophyte, and hepatic communities indicate the canyon bottom, enclosed by straight-up cliffs, have caused a micro-climate difference.

Robert W. Jones of the University of Idaho evaluated the site in 1973. Proposals were made by Robert H. Rose in his Works of Volcanism Theme Study (1970), and Dr. W. Frank Scott in his Columbia Plateau Theme (1978).

A geological phenomenon of world wide interest not far from Jackpot, a Casino town that receives visitors from throughout the U. S. A.

JACKPOT, NEV. -- "Right now," U. S. Senator Chic Hecht, Nevada, points out, "There are 250 measures before congress which would raise taxes.

"All under the guise of attempting to balance the Federal budget.

"But, historically, whenever taxes are raised, the government just finds another place to spend the money.

"The way to cut the deficit, and to protect the taxpayer, is simply to cut government spending.

Well said, Senator.

Carl Hayden

"Highways are byways ......"

That was the contention in a once popular song.

They're not.

Highways are for speedy travel from one destination to another.

Byways are country roads.

Good example of a highway is U. S. 93.

It transports from Alaska in the land of snow and ice to Guatemala in the jungle heat of South America.

Has a lot of varied delaying places in between.

Once an annual brochure extolled the route from onee end to the other.

Through Canada, Western America, Mexico.

Ninety-three deserves such citing. It's the longest highway on the North American continent.

Kept in condition, too. Oh, it may be a little rough on the extreme south end.

Motorists starting from Alaska peter out until few reach the intemperate zone.

In Canada, Highway 93 is known as the Alcan; in Mexico as The Pan American.

Don't be mislead. Course is continuous.

Heavier use is coming to the segment through Nevada and Idaho.

Due to what?

Great Basin National Park, just founded at Baker, Nev.

Advertisements are assuring that.

A full page in Nevada magazine cooperatively by Saddle West at Pahrump, Goldfield Hotel at Goldfield, and the Exchange Club at Beatty; recently sponsored a trivia contest for travelers and businesses along U.S. 95 and U.S. 93 in the State's Pioneer Territory.

Besides the mentioned towns, the advertisement lauds U.S. 95 for serving Amargosa, Lathrop Wells, Tonopah, Hawthorne, and Schurz.

And that U.S. 93 harbors Alamo, Caliente, Panaca, and Pioche.

Why?

Because they will produce traffic abundantly from Las Vegas, which is the joining point for northbound automobiles from Los Angeles, Calif., and Phoenix, Ariz.

The four communities, actually, are on Old U.S. 93, but offer the shortest connection from the Southwest to Baker, small town at entrance to both the Park and Lehman Caves National Monument.

Lehman Caves is encompassed by the 77,000 acre park which features 13,000 foot Wheeler Peak and ancient bristle cone pine trees.

Ninety-three now, though, goes north through Hiko to Ely, eliminating the Rock Canyons south of Caliente and lofty Connor's Pass.

Exciting, however, for tourists.

As is Pioche, which originated as a hysterical mining town, since become historical.

Original court house therein made an enduring name for itself by stacking up during construction unending costs.

Seems politics of the time had a hand.

I knew Baker when it was a quiet, little hideaway, but those times will now be gone forever.

It will become a West Yellowstone, Mont., or a Jackson, Wyo., roaring in summer with sightseers.

That brings up something:

Highway 93 is the shortest way from Las Vegas to West Yellowstone, entrance to Yellowstone National Park, and Jackson is the same to Teton National Park.

Northbound after Ely you will find, successively, Curry, Wells, and Jackpot while still in Nevada.

At Jackpot you jump across the Idaho line, and 40 miles off find Twin Falls, city of 25,000 population.

There you will not only find everything you need, but also everything you want.

If in the latter instance the bill comes to hundreds or thousands to much, simply put the purchase on your old reliable credit card.

Departing Jackpot, a casino haven, you buzz through Twin to Shoshone. Turn left there for Sun Valley, famous as a ski resort, and over Galena Summit to Stanley Basin. Or right for Craters of the Moon National Monument.

At the Craters the first astronauts studied in preparation for their hurtling to the moon, which sphere was found greatly more dusty.

Twenty-seven miles beyond the Monument is Arco, a small town which was the first in the world to be lighted with atomic energy power. It was produced at the then newly installed Atomic Energy Commission plant on the sagebrush desert to the east.

Right at Arco you head for Yellowstone or Teton Parks, maybe both, via Idaho Falls.

Left you travel into the Salmon, or River of No Return, country. River of No Return because it was there a Lemhi Indian, showed the Lewis & Clark Expedition farther travel by boat was impossible because of rapids.

Ninety-three is high, wide and will get handsomer as its popularity expands.

No question about that.

But there is a question over Douglas D. Drill's Doubtful Dictionary definition (five capital D's, plus a small one) of a highway.

Drill, tongue wadded against his cheek interior, says a highway is a "road traveled by Timothy O'Leary."

A road, like we said in the beginning, is a byway.

Maybe Drill refers to traveling in circles.

Not 93; it's straight north-south.

Little matter, travel due compass north from Vegas. Ask about the wilderness area west of Jackpot, and the fossil beds in Hagerman Valley, Ida.

And find new hideouts.

That's the message for today.

By Carl Hayden

Hagerman Fossil Beds National Monument.

Get used to saying that; it's coming.

Since May, 1975, it's been the Hagerman Fauna Sites National Natural Landmark.

A sustained move is underway for not only a change in title, but also to ready the beds for tourist acceptance.

Immediately west of Hagerman, Ida., 35 miles down Snake River from Twin Falls, Ida., the beds cover 3875 acres.

"The Hagerman sites have an international reputation among paleontologists as one of the most, if not the most, significant and important locations of Upper Pliocene Terrestrial Fossils in the World."

That's in writing from the Boise, Ida., office of the U. S. Department of Interior's Bureau of Land Management.

"The Fossil sites are distributed vertically through a 500 foot stratigraphic section of the Glenns Ferry Formation."

"That makes them of great stratigraphic value."

What is foreseeable by Merle E. Owsley, Mayor of Hagerman, and H. L.(Burt) Holmes, owner-operator of the Rock Lodge on Billingsley Creek who is diligently civic minded, is a cliff side museum much like the one in Dinosaur, Colo., with access from the east side of Snake River by boat.

Eventually, the boat would be replaced by a gondola for speed, convenience, and scenic views.

Aerial transportation would also prevent vehicular disruption. Dinosaur has its public parking lost a half mile away.

No you don't have to walk; busses go to the entrance.

"It is important to realize that the preservation of fossils in the geologic record is rare and imperfect," the BLM, which controls the lands occupied by the fossil beds, continues.

"Many animals are considered to have existed based on the evidence of only a few bones or bone fragments."

There are no accomodations at the beds. Needed before visitors can be invited in numbers.

Access is currently by roads to the north and south that cross the river and circle back, to the top of the escarpment.

At the upper level, the roads pass through a farming tract are dusty, unmarked.

Cactus Pete's Casino in Jackpot, Nev., which attracts travelers, vacationers, sightseers, and students of nature from throughout the U.S., hosts charter fun tours to Balanced Rock, Thousand Springs, the Hagerman Museum, Malad State Park, Perrine Bridge, and Shoshone Falls.

It is anxious to include a national attraction.

Adds the BLM, "The Hagerman Fossil Beds are a rare and valuable resource from which much remains to be studied."

That should excite scholars.

Writes James A. McClure, U.S. Senator, Idaho: "I am reviewing status of the site, and the potential for developing it as a tourist and historical attraction."

He refers in one paragraph to it as the Horse Fossil site.

For, among the bones uncovered of some 90 animals, have been those of what is called the "three toed horse."

They represent the 3½ million year old ancestor of the five to seven year old original of the breed.

A full replica stands behind glass in the Hagerman Historical Society's Museum.

Skeletonized, that is.

To date 310 fossil sites have been documented over a six square mile area at different stratigraphic levels throughout a sequence of 500 vertical feet of sediments.

Most of the sites are in the northern end of the elongated strip. It is in that portion of the land spread the fossilized horse bones were found.

The horse quarry is two to five feet in thickness, and fifty yards wide. It is not known how far it may extend into the erodable bluff.

"The 3½ million year date was, the BLM explains, "determined by means of potassium-argon radiometry of basalt interbedded with the sediments, and then correlated with the proper stratigraphy of the formation within which the fossils are located."

Most of the fossils recovered to date are from an ancient aquatic environment.

Several tons of "fossil materials," including the horse, were sent to the Smithsonian Institute in Washington, D.C., by Dr. C. Lewis Gasin in 1934.

Russian scientists have explored the beds, and declare them one of the best found to date on the face of the globe.

Time they were made available to the knowledge seeking public.

○